

1 assist the commissioner~~[executive director]~~ in reviewing the proposed application
2 and plan of reorganization or merger.

3 (4) Upon receipt of the application and plan of reorganization or merger, the
4 commissioner~~[executive director]~~ shall submit any application to the Attorney
5 General for examination. The Attorney General shall have access to the
6 commissioner's~~[executive director's]~~ staff and all consultants retained by the
7 commissioner~~[executive director]~~ for review of the application. The Attorney
8 General may examine the application and plan or reorganization or merger for
9 compliance with the standards in KRS 304.37-555. The Attorney General may
10 submit written findings and a recommendation of approval, disapproval, or
11 conditional approval of the application and plan or reorganization or merger to the
12 commissioner~~[executive director]~~. Written findings and recommendations shall be
13 delivered to the commissioner~~[executive director]~~ no later than five (5) days prior
14 to the public hearing required by KRS 304.37-505 and 304.37-510 and shall be
15 entered into the record at the hearing.

16 (5) The commissioner~~[executive director]~~ shall at all times retain jurisdiction over the
17 mutual insurance holding company and its intermediate holding company
18 subsidiaries with stock insurance company subsidiaries.

19 (6) Following the hearing required in KRS 304.37-505 and 304.37-510, the
20 commissioner~~[executive director]~~ shall, by order, approve, conditionally approve,
21 or deny an application. The commissioner~~[executive director]~~ may require, as a
22 condition of approval of the proposed reorganization, modification of the proposed
23 plan or reorganization as the commissioner~~[executive director]~~ finds necessary. The
24 applicant shall accept required modifications by filing appropriate amendments to
25 the proposed plan of reorganization with the commissioner~~[executive director]~~
26 within thirty (30) days of the date of the order of the commissioner~~[executive~~
27 ~~director]~~ requiring modifications. If the applicant does not accept the required

1 modifications by failing to file the required amendments to the proposed plan of
 2 reorganization within thirty (30) days, the proposed reorganization shall be deemed
 3 denied.

4 (7) An approval or conditional approval of a plan of reorganization shall expire if the
 5 reorganization is not completed within one hundred eighty (180) days unless the
 6 time period is extended by the commissioner~~{executive director}~~ upon a showing of
 7 good cause.

8 (8) The commissioner~~{executive director}~~ may revoke approval or conditional approval
 9 of an applicant's plan of reorganization if the commissioner~~{executive director}~~
 10 finds the applicant has failed to comply with the plan of reorganization. The
 11 commissioner~~{executive director}~~ may compel completion of a plan of
 12 reorganization unless the plan is abandoned in its entirety. The
 13 commissioner~~{executive director}~~ shall retain jurisdiction over the applicant until a
 14 plan of reorganization has been completed.

15 (9) Upon completion of all elements of a plan of reorganization and any conditions
 16 placed on the reorganization by the commissioner~~{executive director}~~, the applicant
 17 shall provide a notice of and documentation of completion to the
 18 commissioner~~{executive director}~~.

19 (10) Within twelve (12) months after the commissioner~~{executive director}~~ receives the
 20 notice specified in subsection (9) of this section, the commissioner~~{executive~~
 21 ~~director}~~ shall examine the affairs, transactions, accounts, records, and assets of the
 22 mutual holding company, reorganized insurer, and its affiliated persons for
 23 compliance with the plan of reorganization and for protection of policyholder
 24 interests.

25 ➔Section 1497. KRS 304.37-570 is amended to read as follows:

26 (1) No stock offering by a mutual insurance holding company, an insurance company
 27 subsidiary of a mutual insurance holding company, an intermediate holding

1 company subsidiary of a mutual insurance holding company, or an insurance
 2 company subsidiary of an intermediate holding company subsidiary to a mutual
 3 insurance holding company shall occur without the prior approval of the
 4 commissioner~~[executive director]~~. The commissioner's~~[executive director's]~~
 5 approval may be obtained only through an application and hearing process.

6 (2) Every application for approval of a stock offering shall contain the following
 7 information:

8 (a) A description of the stock intended to be offered by the applicant, including a
 9 description of all shareholder rights;

10 (b) The total number of shares authorized to be issued, the estimated number of
 11 shares the applicant requests permission to offer, and the intended date or
 12 range of dates for the offering;

13 (c) A justification for a uniform planned offering price or a justification of the
 14 method by which the offering price will be determined;

15 (d) The name or names of any underwriter, syndicate member, or placement agent
 16 involved and, if known, the name or names of each entity, person, or group of
 17 persons to whom the stock offering is to be made who will control five
 18 percent (5%) or more of the total outstanding class of shares, and the manner
 19 in which the offer is to be tendered. If any entity or person is a corporation or
 20 business organization, the name of each member of its board of directors or
 21 equivalent management team shall be provided along with the name of each
 22 member of the board of directors of the offeror. Copies of any filings with the
 23 Securities and Exchange Commission disclosing intended acquisitions of the
 24 stock shall be included in the application;

25 (e) A description of stock subscription rights to be afforded members of the
 26 mutual insurance holding company in conjunction with the stock offering;

27 (f) A detailed description of all expenses to be incurred in conjunction with the

1 stock offering;

2 (g) An explanation of how funds raised by the stock offering are to be used; and

3 (h) Any other information requested by the commissioner~~executive director~~.

4 (3) No application regarding a planned stock offering shall be approved unless the plan
5 contains provisions:

6 (a) Requiring a majority of the members of the board of directors of the mutual
7 insurance holding company to be persons who are not interested persons of
8 the mutual insurance holding company or of any subsidiary or affiliated
9 person of the company. The commissioner~~executive director~~ may waive this
10 requirement upon a showing of good cause based on clear and convincing
11 evidence;

12 (b) For the mutual insurance holding company to adopt articles of incorporation
13 prohibiting any waiver of dividends from stock subsidiaries except under
14 conditions specified in its articles of incorporation and after approval of the
15 waiver by the board of directors of the mutual insurance holding company and
16 the commissioner~~executive director~~;

17 (c) Requiring that the board of directors of any insurance company subsidiary of a
18 mutual insurance holding company, any intermediate holding company
19 subsidiary of a mutual holding company, or the insurance company subsidiary
20 of an intermediate holding company shall include at least three (3) directors
21 who are not interested persons of the mutual insurance holding company;

22 (d) Establishing, within the board of directors of the corporation offering stock, a
23 pricing committee consisting exclusively of directors who are not interested
24 persons who shall have sole responsibility for evaluating and approving the
25 price of any stock offering;

26 (e) Establishing, within the board of directors of the mutual insurance holding
27 company, any insurance company subsidiary of a mutual insurance holding

1 company, any intermediate holding company subsidiary, and any insurance
2 company subsidiary of an intermediate holding company subsidiary to a
3 mutual insurance holding company, an executive compensation committee
4 consisting exclusively of directors who are not interested persons, who shall
5 have sole responsibility for evaluating and approving compensation for
6 directors, officers, and employees;

7 (f) Establishing that for any committee of the mutual insurance holding company,
8 any insurance company subsidiary of a mutual insurance holding company,
9 any intermediate holding company subsidiary, and any insurance company
10 subsidiary of an intermediate holding company subsidiary to a mutual
11 insurance holding company, at least two-thirds (2/3) of any committee having
12 responsibility for making decisions affecting capital structure or mergers and
13 acquisitions shall not be interested persons;

14 (g) Prohibiting officers, directors, and insiders of the mutual insurance holding
15 company and its subsidiaries and affiliates from the purchase or beneficial
16 ownership of any shares of the stock offering, or issuance of stock options to
17 or for the benefit of the officers, directors, and insiders for a period of at least
18 six (6) months following the first date the offering was publicly and regularly
19 traded. This paragraph shall not be construed to limit the rights of officers,
20 directors, and insiders from exercising subscription rights generally accorded
21 members of the mutual insurance holding company, except that, in accordance
22 with any subscription rights, the officers, directors, and insiders of the mutual
23 insurance holding company and its subsidiaries and affiliates may not
24 purchase or own, in the aggregate, more than one percent (1%) of the stock
25 offering for a period of at least six (6) months following the first date the
26 offering was publicly and regularly traded;

27 (h) For a period of two (2) years after the six (6) month period referred to in

1 paragraph (g) of this section, the officers, directors, and insiders of the mutual
 2 insurance holding company and its subsidiaries and affiliates may not
 3 purchase or beneficially own, in the aggregate, more than five percent (5%) of
 4 the stock of the insurance company subsidiary of a mutual insurance holding
 5 company, an intermediate holding company subsidiary of a mutual insurance
 6 company, or an insurance company subsidiary of an intermediate holding
 7 company subsidiary to a mutual insurance holding company; and

8 (i) Requiring that all members of the mutual insurance holding company are
 9 granted stock subscription rights in any initial stock offering. This requirement
 10 may be waived by the commissioner~~[executive director]~~ upon a showing of
 11 good cause at public hearing. For purposes of this paragraph, good cause may
 12 only be found where the members of the mutual insurance holding company
 13 are given rights to participate in the appreciation of the stock offered that are
 14 comparable to stock subscription rights.

15 (4) An insurance company subsidiary of a mutual insurance holding company, an
 16 intermediate holding company subsidiary of a mutual insurance company, or an
 17 insurance company subsidiary of an intermediate holding company subsidiary to a
 18 mutual insurance holding company may issue more than one (1) class of stock if:

19 (a) At all times a majority of the voting stock is held by the mutual insurance
 20 holding company or its subsidiary; and

21 (b) No class of common stock possesses greater dividend or other rights than the
 22 class held by the mutual insurance holding company or its subsidiary.

23 (5) The commissioner~~[executive director]~~ shall hire, at the applicant's expense,
 24 attorneys, actuaries, accountants, investment bankers, and other experts as may
 25 reasonably be necessary to assist the commissioner~~[executive director]~~ in reviewing
 26 the application.

27 (6) The commissioner~~[executive director]~~ shall, in the commissioner's~~[executive~~

1 ~~director's~~ discretion, hold a public hearing in accordance with KRS Chapter 13B
 2 regarding any application for approval of a stock offering. Upon receipt of an
 3 application for approval of a stock offering which includes an initial offering of
 4 stock, the commissioner~~[executive director]~~ shall hold a public hearing at which all
 5 interested parties may appear and present evidence and argument regarding the
 6 applicant's planned offering. The commissioner~~[executive director]~~ shall provide
 7 the applicant adequate notice of the hearing so that the applicant can provide notice
 8 of the hearing to members of the mutual insurance holding company, in a manner
 9 approved by the commissioner~~[executive director]~~, not less than twenty (20) days
 10 prior to the hearing. Following the hearing, the commissioner~~[executive director]~~
 11 may approve, conditionally approve, or deny the application. The
 12 commissioner~~[executive director]~~ may approve the plan if:

- 13 (a) The offering complies with these rules and other provisions of law;
- 14 (b) The method for establishing the price of a stock offering is consistent with
- 15 generally accepted market or industry practices for establishing stock offering
- 16 prices in similar transactions; and
- 17 (c) The plan and offering will not unfairly impact the interests of members of the
- 18 mutual insurance holding company.

19 (7) Nothing in this section shall be deemed to prohibit the filing of a registration
 20 statement with the Securities and Exchange Commissioner prior to or concurrently
 21 with the giving of notice to members.

- 22 (a) Notwithstanding subsections (1) to (6) of this section, a stock offering which
- 23 is not an initial stock offering and which offers stock regularly traded on the
- 24 New York Stock Exchange, the American Stock Exchange, or another
- 25 exchange approved by the commissioner~~[executive director]~~, or designated on
- 26 the national association of securities dealers automated quotations-national
- 27 market system may be sold if a mutual insurance holding company, an

1 insurance company subsidiary of a mutual insurance holding company, an
 2 intermediate holding company, or an insurance company subsidiary of an
 3 intermediate holding company intends to make a stock offering which would
 4 be governed by the provisions of KRS 304.37-500 to 304.37-580. The entity
 5 shall deliver to the commissioner~~[executive director]~~ not less than thirty (30)
 6 days prior to the offering a notice of the planned stock offering and
 7 information regarding the following:

- 8 1. The total number of shares intended to be offered;
- 9 2. The intended date of sale;
- 10 3. Evidence that the stock is regularly traded on one (1) of the public
 11 exchanges noted in subsection (a) of this section; and
- 12 4. A record of the trading pace and trading volume of the stock during the
 13 prior fifty-two (52) weeks.

14 (b) The commissioner~~[executive director]~~ shall be deemed to have approved the
 15 sale unless, within thirty (30) days following receipt of the notice, the
 16 commissioner~~[executive director]~~ issues an objection to the sale. If the
 17 commissioner~~[executive director]~~ issues an objection to the sale, the
 18 procedures set forth in subsection (2) of this section shall be followed to
 19 determine whether the commissioner~~[executive director]~~ approves the
 20 proposed sale;

21 (c) Approval of a stock offering obtained under either subsection (6) or (7) of this
 22 section shall expire ninety (90) days following the date of the approval or
 23 deemed approval, except as otherwise provided by the order of the
 24 commissioner~~[executive director]~~; and

25 (d) No prospectus, information, sales material, or sales presentation by the
 26 applicant, or by any representative, agent, or affiliate of the applicant shall
 27 contain a representation that the commissioner's~~[executive director's]~~

1 approval of a stock offering constitutes an endorsement of the price, price
2 range, or any other information relating to the stock.

3 ➔ Section 1498. KRS 304.38-030 is amended to read as follows:

4 As used in this subtitle, unless the context otherwise requires:

5 (1) "~~Commissioner~~~~[Executive director]~~" means the commissioner~~[executive director]~~
6 of the Department of Insurance.

7 (2) "Enrollee" means a person who has been enrolled in a health maintenance
8 organization.

9 (3) "Evidence of coverage" means any certificate, agreement, contract, or other
10 document issued to an enrollee stating the health care services to which the enrollee
11 is entitled. All coverages described in an evidence of coverage issued by a health
12 maintenance organization are deemed to be "health benefit plans" to the extent
13 defined in KRS 304.17A-005 unless exempted by the commissioner~~[executive~~
14 ~~director]~~.

15 (4) "Health care services" means any services included in the furnishing to any
16 individual of medical, optometric, or dental care, or hospitalization or incident to
17 the furnishing of such care or hospitalization, as well as the furnishing to any person
18 of any and all other services and goods for the purpose of preventing, alleviating,
19 curing, or healing human illness, physical disability, or injury.

20 (5) "Health maintenance organization" means any person who undertakes to provide,
21 directly or through arrangements with others, health care services to individuals
22 enrolled with such an organization on a per capita or a predetermined, fixed
23 prepayment basis. A health maintenance organization is authorized to provide all
24 health care services.

25 (6) "Person" includes but is not limited to any individual, partnership, association, trust,
26 or corporation.

27 (7) "Provider" means a person or group of persons licensed to practice medicine,

1 osteopathy, dentistry, podiatry, optometry, or another health profession in a state or
 2 licensed to act as a hospital or another health care facility.

3 ➔Section 1499. KRS 304.38-035 is amended to read as follows:

4 No person shall in this state be, act as, or hold himself or herself out as a health
 5 maintenance organization unless he or she holds a certificate of authority as a health
 6 maintenance organization from the commissioner~~[executive director]~~.

7 ➔Section 1500. KRS 304.38-040 is amended to read as follows:

8 (1) A corporation, limited liability company, or partnership may apply to the
 9 commissioner~~[executive director]~~ for and obtain a certificate of authority to
 10 establish and operate a health maintenance organization in compliance with this
 11 subtitle.

12 (2) Health maintenance organizations which are corporations may be organized by
 13 applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273,
 14 if for nonstock, nonprofit, to the extent that the same are not inconsistent with the
 15 express provisions of this subtitle.

16 (3) Each application for a certificate of authority shall be submitted to the
 17 commissioner~~[executive director]~~ upon a form prescribed by the
 18 commissioner~~[him]~~ and shall set forth or be accompanied by:

19 (a) Evidence that the applicant has been issued a certificate of need in accordance
 20 with the provisions of KRS Chapter 216B or evidence that no certificate of
 21 need is required by KRS Chapter 216B;

22 (b) Articles of incorporation, articles of organization, partnership agreement, or
 23 other applicable documents in quadruplicate, acknowledged and verified by
 24 the applicant;

25 (c) The initial bylaws, operating agreement, or other equivalent documents of the
 26 organization in triplicate, or any other similar documents;

27 (d) A statement which shall include describing the health maintenance

1 organization:

- 2 1. The health services to be offered;
- 3 2. The financial risks to be assumed;
- 4 3. The initial geographic area to be served;
- 5 4. Pro forma financial projections for the first three (3) years of operations
- 6 including the assumptions the projections are based upon;
- 7 5. The sources of working capital and funding;
- 8 6. A description of the persons to be covered by the health maintenance
- 9 organization;
- 10 7. Any proposed reinsurance arrangements;
- 11 8. Any proposed management, administrative, or cost-sharing
- 12 arrangements; and
- 13 9. A description of the health maintenance organization's proposed method
- 14 of marketing;

15 (e) The names, addresses, and positions of the initial board of directors, board of
 16 trustees, or other governing body responsible for the conduct of the affairs of
 17 the applicant;

18 (f) Any proposed evidence of coverage to be issued by the applicant to
 19 individuals, enrollees, groups, or other contract holders; and

20 (g) Evidence of financial responsibility as provided in KRS 304.38-060.

21 ➔Section 1501. KRS 304.38-050 is amended to read as follows:

22 (1) No health maintenance organization shall deliver or issue for delivery in this state
 23 any contract describing health benefits available, or any endorsement, rider, or
 24 application which becomes a part thereof, or any amendments thereto or
 25 modifications thereof, or the schedule of fees or other periodic charges to be paid by
 26 enrollees, until a copy of the form has been filed with and approved by the
 27 commissioner~~executive director~~. Each form shall contain a complete and clear

1 statement of:

- 2 (a) The health care services to which the enrollee is entitled;
- 3 (b) Any limitations on the services, kind of services, or benefits to be provided,
- 4 including any deductible or copayment feature;
- 5 (c) Where and in what manner information is available as to how services may be
- 6 obtained; and
- 7 (d) Any other provisions pertaining to the delivery of health care services.

8 Any schedule of fees or other periodic charges to be paid by enrollees submitted to
9 and filed with the commissioner~~[executive director]~~ along with adequate supporting
10 information to show that the charges or fees are not excessive, inadequate, or
11 unfairly discriminatory.

- 12 (2) At the expiration of sixty (60) days, the form so filed shall be deemed approved
- 13 unless prior thereto it has been affirmatively approved or disapproved by order of
- 14 the commissioner~~[executive director]~~, or a hearing has been scheduled by order of
- 15 the commissioner~~[executive director]~~. In the event that a hearing is held, the sixty
- 16 (60) day waiting period shall begin anew after the close of the hearing. Approval of
- 17 the form by the commissioner~~[executive director]~~ shall constitute a waiver of any
- 18 unexpired portion of the waiting period. The commissioner~~[executive director]~~ may
- 19 extend by not more than an additional thirty (30) day period within which he or she
- 20 may affirmatively approve or disapprove the form by giving notice to the insurer of
- 21 the extension before expiration of the initial sixty (60) day period. At the expiration
- 22 of the period as so extended, and in the absence of the prior affirmative approval or
- 23 disapproval, the form shall be deemed approved. The commissioner~~[executive~~
- 24 ~~director]~~ may at any time withdraw the approval.

- 25 (3) This section shall not apply to rate filings made under Subtitle 17A of this chapter.

26 ➔Section 1502. KRS 304.38-060 is amended to read as follows:

27 Upon receipt of an application for issuance of a certificate of authority, the

1 ~~commissioner~~~~[executive-director]~~ shall issue or deny the same. Issuance of a certificate of
 2 authority shall be granted only if the ~~commissioner~~~~[executive-director]~~ finds that the
 3 applicant has complied with KRS 304.38-040 and has paid the application fee, and the
 4 ~~commissioner~~~~[executive-director]~~ is satisfied that the following conditions are met:

- 5 (1) The persons responsible for the conduct of the affairs of the application are
 6 competent, trustworthy, and possess good reputations;
- 7 (2) The health maintenance organization is financially responsible and may reasonably
 8 be expected to meet its obligations to enrollees and prospective enrollees. In making
 9 this determination, the ~~commissioner~~~~[executive-director]~~ may consider:
 - 10 (a) The financial soundness of the health maintenance organization's
 11 arrangements for health care services and the schedule of charges used in
 12 connection therewith;
 - 13 (b) The adequacy of working capital;
 - 14 (c) Any agreement with an insurer, a government, or any other organization for
 15 insuring the payment of the cost of health care services or the provision for
 16 automatic applicability of an alternative coverage in the event of
 17 discontinuance of the health maintenance organization or its inability to meet
 18 its financial obligations;
 - 19 (d) Examples of any agreements with providers for the provision of health care
 20 services by provider type; and
 - 21 (e) Compliance with KRS 304.38-070 if the applicant is applying for a health
 22 maintenance organization certificate of authority as a guarantee that the
 23 obligations will be duly performed.

24 ➔Section 1503. KRS 304.38-070 is amended to read as follows:

- 25 (1) This subsection applies to a corporation or limited liability company applying for
 26 and holding a certificate of authority as a health maintenance organization:
 - 27 (a) Except as provided in paragraph (b) of this subsection, to qualify for authority

1 to act as a health maintenance organization, a corporation or limited liability
2 company shall possess and thereafter maintain unimpaired paid-in capital
3 stock of one million dollars (\$1,000,000), and, when first so authorized, shall
4 possess initial free surplus of not less than two million dollars (\$2,000,000);

5 (b) A corporation holding a valid certificate of authority to transact business as a
6 health maintenance organization in Kentucky immediately prior to July 15,
7 1986, may, if otherwise qualified therefor, continue to be so authorized while
8 meeting the requirements for protection against insolvency required for such
9 authority immediately prior to July 15, 1986. Notwithstanding the other
10 provisions hereof, the exception provided in this paragraph shall cease to
11 apply to any such health maintenance organization from and after the date it
12 has accumulated capital and surplus equal to or in excess of the capital and
13 surplus required by paragraph (a) of this subsection; and

14 (c) Each corporation authorized as a health maintenance organization shall at all
15 times maintain bona fide additional surplus in the amount of two hundred fifty
16 thousand dollars (\$250,000) and shall at all times comply with the risk-based
17 capital requirements as established in administrative regulations promulgated
18 by the commissioner~~[executive director]~~. A corporation holding a valid
19 certificate of authority to transact business as a health maintenance
20 organization in Kentucky immediately prior to July 15, 1986, may, if
21 otherwise qualified therefor, continue to be so authorized while meeting the
22 requirements for protection against insolvency as required for such authority
23 immediately prior to July 15, 1986. The exception provided in this paragraph
24 shall cease to apply to any such health maintenance organization from and
25 after the date upon which it has accumulated additional surplus equal to or in
26 excess of the additional surplus required by this subsection.

27 (2) This subsection applies to a partnership applying for or holding a certificate of

1 authority as a health maintenance organization:

2 (a) Except as provided in paragraph (b) of this subsection, to qualify for authority
3 to act as a health maintenance organization, a partnership shall possess, when
4 first so authorized, a total of at least three million dollars (\$3,000,000) in its
5 capital accounts. Thereafter, a partnership authorized as a health maintenance
6 organization shall possess and maintain a total of at least one million two
7 hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall
8 comply at all times with the risk-based capital requirement established in
9 administrative regulations promulgated by the commissioner~~executive~~
10 ~~director~~;

11 (b) A partnership holding a valid certificate of authority to transact business as a
12 health maintenance organization in Kentucky immediately prior to July 15,
13 1986, may, if otherwise qualified therefor, continue to be so authorized while
14 meeting the requirements for protection against insolvency required for such
15 authority immediately prior to July 15, 1986. The exception provided for in
16 this paragraph shall cease to apply to any such health maintenance
17 organization from and after the date upon which the total of the funds which it
18 has accumulated in its capital accounts equal or exceed the total of the funds
19 in its capital accounts required by this subsection.

20 (3) A corporation, partnership, or limited liability company applying for and holding a
21 certificate of authority as a health maintenance organization which by contract
22 manages care and processes health care claims solely for Medicaid-eligible
23 enrollees and the Kentucky Children's Health Insurance Program shall comply with
24 risk-based capital (RBC) requirements as follows:

25 (a) For purposes of this subsection, risk-based capital shall be determined in
26 accordance with the risk-based capital requirements for health maintenance
27 organizations established under this subtitle and any administrative regulation

1 promulgated pursuant to KRS Chapter 13A, except as otherwise provided in
2 this subsection. A corporation, partnership, or limited liability company
3 applying for and holding a certificate of authority as a health maintenance
4 organization which by contract manages care and processes health care claims
5 solely for Medicaid-eligible enrollees and the Kentucky Children's Health
6 Insurance Program shall comply with the same risk-based capital requirements
7 as other health maintenance organizations, except that no additional phase-in
8 or risk-based capital reports shall be required for 2000 or 2001, and the risk-
9 based capital levels shall be established in accordance with paragraph (b) of
10 this subsection;

11 (b) For the risk-based capital reports required to be filed by health maintenance
12 organizations which manage care and process health care claims solely for
13 Medicaid-eligible enrollees and the Kentucky Children's Health Insurance
14 Program, the risk-based capital levels shall be defined as follows:

- 15 1. "Company Action Level RBC" means the product of two (2.0) and its
16 Authorized Control Level RBC;
- 17 2. "Regulatory Action Level RBC" means the product of one and five-
18 tenths (1.5) and its Authorized Control Level RBC;
- 19 3. "Authorized Control Level RBC" means the product of four-tenths (.40)
20 and the risk-based capital after covariance determined under the risk-
21 based capital formula in accordance with the RBC instruction; and
- 22 4. "Mandatory Control Level RBC" means the product of seven-tenths
23 (.70) and the Authorized Control Level RBC; and

24 (c) A corporation, partnership, or limited liability company applying for and
25 holding a certificate of authority as a health maintenance organization
26 managing care, processing health care claims, or providing health benefits to
27 groups or individuals in addition to Medicaid-eligible and Kentucky

Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

➔Section 1504. KRS 304.38-073 is amended to read as follows:

Each health maintenance organization shall furnish to the commissioner~~executive director~~ a deposit of cash or securities approved by the commissioner~~executive director~~ in an amount not less than five hundred thousand dollars (\$500,000) so that the obligations to the enrollees shall be performed. A health maintenance organization may be required to furnish an additional deposit if the commissioner~~executive director~~ determines, after a hearing, that an additional deposit is necessary for the protection of the health maintenance organization's enrollees.

➔Section 1505. KRS 304.38-075 is amended to read as follows:

(1) Any health maintenance organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The health maintenance organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the department~~office~~ for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.

(2) If a health maintenance organization transfers risk to a provider:

(a) Not in compliance with the standards listed in its approved plan; or

(b) Prior to filing or receiving approval of its plan;

the commissioner~~executive director~~ may require the health maintenance organization to retain additional reserves to cover the risk transferred.

➔Section 1506. KRS 304.38-090 is amended to read as follows:

Organizations subject to the provisions of this subtitle shall make and file with the

1 commissioner~~[executive-director]~~ and the Kentucky Certificate of Need and Licensure
 2 Board annually before March 1 of each year, a statement under oath upon a form to be
 3 prescribed by the commissioner~~[executive-director]~~ covering the preceding year, and
 4 shall include (a) a financial statement of the organization, including a balance sheet,
 5 receipts, and disbursements for the preceding year; (b) the number of persons enrolled
 6 during the year, the number of enrollees as of the end of the year, the number of
 7 enrollments terminated during the year, and any other information relating to the
 8 operation of the health maintenance organization as may be prescribed by the
 9 commissioner~~[executive-director]~~ in order to enable the commissioner~~[executive~~
 10 ~~director]~~ to evaluate the performance of the health maintenance organization.

11 ➔Section 1507. KRS 304.38-095 is amended to read as follows:

12 In his or her discretion, the commissioner~~[executive-director]~~ may require organizations
 13 subject to the provisions of this subtitle to comply with KRS 304.2-205.

14 ➔Section 1508. KRS 304.38-100 is amended to read as follows:

15 The funds of a health maintenance organization shall be invested only in securities or
 16 other investments permitted by Subtitle 7 of Chapter 304 of the Kentucky Revised
 17 Statutes, or such other securities or investments as the commissioner~~[executive-director]~~
 18 may permit.

19 ➔Section 1509. KRS 304.38-130 is amended to read as follows:

20 (1) The commissioner~~[executive-director]~~ may suspend or revoke any certificate of
 21 authority issued to a health maintenance organization under this subtitle if the
 22 commissioner~~[executive-director]~~ finds that any of the conditions exist for which
 23 the commissioner~~[executive-director]~~ could suspend or revoke a certificate of
 24 authority as provided in Subtitles 2 and 3 of this chapter or if the
 25 commissioner~~[executive-director]~~ finds that any of the following conditions exist:

26 (a) The health maintenance organization is operating significantly in
 27 contravention of its basic organizational document or in a manner contrary to

- 1 that described in and reasonably inferred from any other information
 2 submitted under KRS 304.38-040, unless amendments to such submissions
 3 have been filed with and approved by the commissioner~~[executive director]~~;
- 4 (b) The health maintenance organization issues evidence of coverage or uses a
 5 schedule of charges for health care services which do not comply with the
 6 requirements of KRS 304.38-050 or Subtitle 17A of this chapter;
- 7 (c) The health maintenance organization does not provide or arrange for health
 8 care services as approved by the commissioner~~[executive director]~~ in KRS
 9 304.38-050(1)(a);
- 10 (d) The certificate of need and licensure board certifies to the
 11 commissioner~~[executive director]~~ that the health maintenance organization
 12 fails to meet the requirements of the board or that the health maintenance
 13 organization is unable to fulfill its obligations to furnish health care services;
- 14 (e) The health maintenance organization is no longer financially responsible and
 15 may reasonably be expected to be unable to meet its obligations to enrollees or
 16 prospective enrollees;
- 17 (f) The health maintenance organization, or any person on its behalf, has
 18 advertised or merchandised its services in an untrue, misrepresentative,
 19 misleading, deceptive, or unfair manner;
- 20 (g) The continued operation of the health maintenance organization would be
 21 hazardous to its enrollees; or
- 22 (h) The health maintenance organization has otherwise failed to substantially
 23 comply with this subtitle.
- 24 (2) If the certificate of authority of a health maintenance organization is suspended, the
 25 health maintenance organization shall not, during the period of the suspension,
 26 enroll any additional enrollees except newborn children or other newly acquired
 27 dependents of existing enrollees, and shall not engage in any advertising or

1 solicitation whatsoever.

- 2 (3) If the certificate of authority of a health maintenance organization is revoked, the
 3 organization shall proceed, immediately following the effective date of the order of
 4 revocation, to wind up its affairs, and shall conduct no further business except as
 5 may be essential to the orderly conclusion of the affairs of the organization. It shall
 6 engage in no further advertising or solicitation whatsoever. The
 7 commissioner~~[executive director]~~ may, by written order, permit the further
 8 operation of the organization as the commissioner~~[executive director]~~ may find to
 9 be in the best interest of enrollees, to the end that enrollees will be afforded the
 10 greatest practical opportunity to obtain continuing health care coverage. If the
 11 commissioner~~[executive director]~~ permits such further operation the health
 12 maintenance organization will continue to collect the periodic prepayments required
 13 of enrollees.

14 ➔Section 1510. KRS 304.38-140 is amended to read as follows:

15 Any rehabilitation or liquidation of a health maintenance organization shall be conducted
 16 under the supervision of the commissioner~~[executive director]~~ pursuant to and in
 17 accordance with Subtitle 33 of Chapter 304 of the Kentucky Revised Statutes.

18 ➔Section 1511. KRS 304.38-150 is amended to read as follows:

19 The commissioner~~[executive director]~~ may promulgate reasonable rules and regulations
 20 not inconsistent with the provisions of this subtitle that he or she deems necessary for the
 21 proper administration of this subtitle.

22 ➔Section 1512. KRS 304.38-180 is amended to read as follows:

- 23 (1) No health maintenance organization, or representative thereof, may cause or
 24 knowingly permit the use of advertising or solicitation which is untrue or
 25 misleading, or any form of evidence of coverage which is deceptive.
- 26 (2) No health maintenance organization shall cancel an enrollee's coverage, except for
 27 the failure to pay the charge for such coverage, or for such other reasons as may be

1 promulgated in regulations issued by the commissioner~~[executive director]~~.

2 (3) Subtitle 12 of this chapter shall be construed to apply to health maintenance
3 organizations and evidences of coverage, except to the extent that the
4 commissioner~~[executive director]~~ determines that the nature of health maintenance
5 organizations and evidence of coverage under such sections is clearly inappropriate.

6 ➔Section 1513. KRS 304.38-185 is amended to read as follows:

7 In his or her discretion, the commissioner~~[executive director]~~ may include health
8 maintenance organizations or designated types of health maintenance organizations doing
9 business pursuant to this subtitle in coordination of benefits guidelines prescribed
10 pursuant to KRS 304.18-085.

11 ➔Section 1514. KRS 304.38-200 is amended to read as follows:

12 Health maintenance organizations shall be subject to the provisions of this subtitle, and to
13 the following provisions of this chapter, to the extent applicable and not in conflict with
14 the expressed provisions of this subtitle:

- 15 (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- 16 (2) Subtitle 2 -- Commissioner of the Department of Insurance~~[Executive Director]~~;
- 17 (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- 18 (4) Subtitle 4 -- Fees and Taxes;
- 19 (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- 20 (6) Subtitle 6 -- Assets and Liabilities;
- 21 (7) Subtitle 7 -- Investments;
- 22 (8) Subtitle 8 -- Administration of Deposits;
- 23 (9) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;
- 24 (10) Subtitle 12 -- Trade Practices and Frauds;
- 25 (11) Subtitle 14 -- The Insurance Contract;
- 26 (12) Subtitle 17 -- Health Insurance Contracts;
- 27 (13) Subtitle 17A -- Health Benefit Plans;

- 1 (14) Subtitle 17B -- Kentucky Access;
- 2 (15) Subtitle 17C -- Limited Health Service Benefit Plans;
- 3 (16) Subtitle 18 -- Group and Blanket Health Insurance;
- 4 (17) Subtitle 24 -- Domestic Stock and Mutual Insurers;
- 5 (18) Subtitle 25 -- Continuity of Management;
- 6 (19) Subtitle 26 -- Insider Trading of Equity Securities;
- 7 (20) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- 8 (21) Subtitle 37 -- Insurance Holding Company Systems;
- 9 (22) Subtitle 47 -- Insurance Fraud; and
- 10 (23) Subtitle 99 -- Penalties.

11 ➔Section 1515. KRS 304.38A-010 is amended to read as follows:

12 As used in this subtitle, unless the context requires otherwise:

- 13 (1) "Enrollee" means an individual who is enrolled in a limited health services benefit
- 14 plan;
- 15 (2) "Evidence of coverage" means any certificate, agreement, contract, or other
- 16 document issued to an enrollee stating the limited health services to which the
- 17 enrollee is entitled. All coverages described in an evidence of coverage issued by a
- 18 limited health service organization are deemed to be "limited health services benefit
- 19 plans" to the extent defined in KRS 304.17C-010 unless exempted by the
- 20 commissioner~~executive director~~;
- 21 (3) "Limited health service" means dental care services, vision care services, mental
- 22 health services, substance abuse services, chiropractic services, pharmaceutical
- 23 services, podiatric care services, and such other services as may be determined by
- 24 the commissioner~~executive director~~ to be limited health services. Limited health
- 25 service shall not include hospital, medical, surgical, or emergency services except as
- 26 these services are provided incidental to the limited health services set forth in this
- 27 subsection;

1 (4) "Limited health service contract" means any contract entered into by a limited
2 health service organization with a policyholder to provide limited health services;

3 (5) "Limited health service organization" means a corporation, partnership, limited
4 liability company, or other entity that undertakes to provide or arrange limited
5 health service or services to enrollees. A limited health service organization does
6 not include a provider or an entity when providing or arranging for the provision of
7 limited health services under a contract with a limited health service organization,
8 health maintenance organization, or a health insurer; and

9 (6) "Provider" means the same as defined in KRS 304.17A-005(23).

10 ➔Section 1516. KRS 304.38A-020 is amended to read as follows:

11 No person may operate a limited health service organization in this state without
12 obtaining and maintaining a certificate of authority from the commissioner~~executive~~
13 ~~director~~} pursuant to this section and KRS 304.38A-030, 304.38A-040, 304.38A-050,
14 304.38A-060, 304.38A-070, 304.38A-090, and 304.38A-110, except an insurer
15 authorized to transact health insurance in this state.

16 ➔Section 1517. KRS 304.38A-030 is amended to read as follows:

17 An application for a certificate of authority to operate a limited health service
18 organization shall be filed with the commissioner~~executive director~~} on a form
19 prescribed by the commissioner~~executive director~~}. The application shall be verified by
20 an officer or authorized representative of the applicant and shall set forth, or be
21 accompanied by, the following:

22 (1) A copy of the applicant's basic organizational document, such as the articles of
23 incorporation, articles of association, partnership agreement, trust agreement, or
24 other applicable documents and all amendments to these documents;

25 (2) A copy of all bylaws, rules, and regulations, or similar documents, if any, regulating
26 the conduct of the applicant's internal affairs;

27 (3) A list of the names, addresses, official positions, and biographical information of

1 the individuals who are responsible for conducting the applicant's affairs, including
 2 but not limited to all members of the board of directors, board of trustees, executive
 3 committee, or other governing board or committee, the principal officers, and any
 4 person or entity owning or having the right to acquire ten percent (10%) or more of
 5 the voting securities of the applicant, and the partners or members in the case of a
 6 partnership or association. Such listing shall fully disclose the extent and nature of
 7 any contracts or arrangements between any individual who is responsible for
 8 conducting the applicant's affairs and the limited health service organization,
 9 including any possible conflicts of interest;

10 (4) A complete biographical statement, on forms prescribed by the department~~{office}~~,
 11 with respect to each individual identified under this section;

12 (5) A statement generally describing the applicant, its facilities, personnel, and the
 13 limited health services to be offered;

14 (6) A copy of the form of any contract made, or to be made between the applicant and
 15 any person listed in subsection (3) of this section;

16 (7) A copy of the form of any contract made or to be made between the applicant and
 17 any person, corporation, partnership, or other entity for the performance on the
 18 applicant's behalf of any functions including but not limited to marketing,
 19 administration, enrollment, investment management and provider agreements,
 20 subcontract agreements, and risk-sharing arrangements for the provision of limited
 21 health services to enrollees;

22 (8) A copy of the applicant's most recent financial statements audited by independent
 23 certified public accountants. If the financial affairs of the applicant's parent
 24 company are audited by independent certified public accountants but those of the
 25 applicant are not, then a copy of the most recent audited financial statement of the
 26 applicant's parent company, certified by an independent certified public accountant,
 27 attached to which shall be consolidated financial statements of the applicant, shall

1 satisfy this requirement unless the commissioner~~executive director~~ determines
 2 that additional or more recent financial information is required for the proper
 3 administration of this subtitle;

4 (9) A copy of the applicant's financial plan, including a three (3) year projection of
 5 anticipated operating results with all material assumptions, a statement of the
 6 sources of working capital, and any other sources of funding and provisions for
 7 contingencies;

8 (10) A description of the proposed method of marketing;

9 (11) A statement acknowledging that all lawful process in any legal action or proceeding
 10 against the applicant on a cause of action arising in this state is valid if served in
 11 accordance with KRS 304.3-230;

12 (12) A description of how the applicant will comply with KRS 304.38A-040 and
 13 304.38A-080;

14 (13) The fee for issuance of a certificate of authority provided in Subtitle 4 of this
 15 chapter; and

16 (14) Such other information as the commissioner~~executive director~~ may reasonably
 17 require to make the determinations required by this subtitle.

18 ➔Section 1518. KRS 304.38A-040 is amended to read as follows:

19 (1) Following receipt of an application filed pursuant to KRS 304.38A-030, the
 20 commissioner~~executive director~~ shall review the application and notify the
 21 applicant of any deficiencies. The commissioner~~executive director~~ shall issue a
 22 certificate of authority to an applicant if the following conditions are met:

23 (a) The applicant has verified to the commissioner~~executive director~~ that it has
 24 an initial minimum worth of at least two hundred fifty thousand dollars
 25 (\$250,000);

26 (b) The requirements of KRS 304.38A-030 have been fulfilled;

27 (c) The individuals responsible for conducting the applicant's affairs are

competent, trustworthy, and possess good reputations, and have had appropriate experience, training, or education;

(d) The applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and to prospective enrollees. In making his or her determination, the commissioner~~[executive director]~~ may consider:

1. The financial soundness;
2. The adequacy of surplus, working capital, other sources of funding, and provisions for contingencies;
3. Any agreement for paying the cost of the limited health services or for alternative coverage in the event of insolvency of the limited health service organization; and
4. The manner in which the requirements of KRS 304.38A-030 have been fulfilled; and

(e) Any deficiencies identified by the commissioner~~[executive director]~~ have been corrected.

(2) If the certificate of authority is denied, the commissioner~~[executive director]~~ shall notify the applicant and shall specify the reasons for denial in the notice. The limited health service organization shall have sixty (60) days from the date of receipt of the notice to request a hearing before the commissioner~~[executive director]~~ pursuant to KRS 304.2-310.

(3) Each certificate of authority issued to a limited health service organization shall designate the type of services the limited health service organization is authorized to provide.

➔Section 1519. KRS 304.38A-060 is amended to read as follows:

(1) A limited health service organization may add one (1) or more limited health services by:

(a) Filing the relevant information required by KRS 304.38A-030;

- 1 (b) Demonstrating compliance with KRS 304.38A-030 and 304.38A-080; and
- 2 (c) Obtaining approval from the commissioner~~[executive director]~~ prior to
- 3 offering the additional limited health service.

4 (2) If the filings are disapproved, the commissioner~~[executive director]~~ shall notify the
 5 limited health service organization and shall specify the reasons for disapproval in
 6 the notice. The limited health service organization shall have sixty (60) days from
 7 the date of receipt of the notice to request a hearing before the
 8 commissioner~~[executive director]~~ pursuant to KRS 304.2-310.

9 ➔Section 1520. KRS 304.38A-070 is amended to read as follows:

10 A limited health service organization shall be subject to the provisions of this subtitle,
 11 and to the following provisions of this chapter, to the extent applicable and not in conflict
 12 with the expressed provisions of this subtitle:

- 13 (1) Subtitle 1--Scope--General Definitions and Provisions;
- 14 (2) Subtitle 2--Insurance Commissioner~~[Executive Director]~~;
- 15 (3) Subtitle 3--Authorization of Insurers and General Requirements;
- 16 (4) Subtitle 4--Fees and Taxes;
- 17 (5) Subtitle 5--Kinds of Insurance--Limits of Risk--Reinsurance;
- 18 (6) Subtitle 6--Assets and Liabilities;
- 19 (7) Subtitle 7--Investments;
- 20 (8) Subtitle 8--Administration of Deposits;
- 21 (9) Subtitle 9--Agents, Consultants, Solicitors, and Adjusters;
- 22 (10) Subtitle 12--Trade Practices and Frauds;
- 23 (11) Subtitle 14--The Insurance Contract;
- 24 (12) Subtitle 17--Health Insurance Contracts;
- 25 (13) Subtitle 17C--Limited Health Services Benefit Plans;
- 26 (14) Subtitle 18--Group and Blanket Health Insurance;
- 27 (15) Subtitle 24--Domestic Stock and Mutual Insurers;

- 1 (16) Subtitle 25--Continuity of Management;
- 2 (17) Subtitle 26--Insider Trading of Equity Securities;
- 3 (18) Subtitle 33--Insurers Rehabilitation and Liquidation;
- 4 (19) Subtitle 37--Insurance Holding Company Systems;
- 5 (20) Subtitle 47--Insurance Fraud; and
- 6 (21) Subtitle 99--Penalties.

7 ➔Section 1521. KRS 304.38A-080 is amended to read as follows:

- 8 (1) Each limited health service organization shall at all times have and maintain a net
- 9 worth of not less than one hundred twenty-five thousand dollars (\$125,000).
- 10 (2) (a) Each limited health service organization shall deposit with the
- 11 commissioner~~[executive director]~~ or with any organization or trustee
- 12 acceptable to the commissioner~~[executive director]~~ through which a custodial
- 13 or controlled account is utilized, cash, securities, or any combination of these
- 14 or other measures that is acceptable to the commissioner~~[executive director]~~
- 15 in an amount equal to fifty thousand dollars (\$50,000).
- 16 (b) The deposit shall be an admitted asset.
- 17 (3) A limited health service organization shall at all times comply with the risk-based
- 18 capital requirements for health organizations in administrative regulations
- 19 promulgated by the commissioner~~[executive director]~~ for health maintenance
- 20 organizations and other health organizations.

21 ➔Section 1522. KRS 304.38A-090 is amended to read as follows:

- 22 (1) The commissioner~~[executive director]~~ may suspend or revoke the certificate of
- 23 authority issued to a limited health service organization pursuant to this subtitle
- 24 upon determining that any of the following conditions exist:
- 25 (a) The limited health service organization is operating significantly in
- 26 contravention of its basic organizational document or in a manner contrary to
- 27 that described in and reasonably inferred from any other information

1 submitted pursuant to KRS 304.38A-030, unless amendments to the
 2 submissions have been filed with and approved by the
 3 commissioner~~{executive director}~~;

4 (b) The limited health service organization issues an evidence of coverage or
 5 schedule of charges for limited health services which does not comply with
 6 the requirements of Subtitle 17C of this chapter;

7 (c) The limited health service organization is unable to fulfill its obligations to
 8 furnish limited health services;

9 (d) The limited health service organization is not financially responsible and may
 10 reasonably be expected to be unable to meet its obligations to enrollees or
 11 prospective enrollees;

12 (e) The net worth of the limited health service organization is less than that
 13 required by KRS 304.38A-080 or the limited health service organization has
 14 failed to correct any deficiency in its net worth as required by the
 15 commissioner~~{executive director}~~;

16 (f) The continued operation of the limited health service organization would be
 17 hazardous to its enrollees; or

18 (g) The limited health service organization has otherwise failed to comply with
 19 this subtitle.

20 (2) If the commissioner~~{executive director}~~ has cause to believe that grounds for the
 21 suspension or revocation of a certificate of authority exist, he or she shall notify the
 22 limited health service organization in writing specifically stating the grounds for
 23 suspension or revocation and fixing a time not more than sixty (60) days thereafter
 24 for a hearing on the matter in accordance with KRS Chapter 13B.

25 (3) When the certificate of authority of a limited health service organization is revoked,
 26 the organization shall proceed immediately following the effective date of the order
 27 of revocation to wind up its affairs, and shall conduct no further business except as

1 may be essential to the orderly conclusion of the affairs of the organization. It shall
 2 engage in no further advertising or solicitation whatsoever. The
 3 commissioner~~executive director~~ may, by written order, permit such further
 4 operation of the organization as he or she may find to be in the best interest of
 5 enrollees, to the end that enrollees will be afforded the greatest practical opportunity
 6 to obtain continuing limited health services.

- 7 (4) A limited health service organization shall be subject to the provisions of KRS
 8 304.2-210 to 304.2-300 and to the provisions of Subtitle 2 of this chapter for
 9 determining financial condition, market conduct, and business practices.

10 ➔Section 1523. KRS 304.38A-100 is amended to read as follows:

- 11 (1) Any limited health service organization that contracts with a provider or provider
 12 organization for the transfer of risk to the provider shall take reasonable steps to
 13 ensure the transferee is able to accept and manage the risk to be transferred. The
 14 limited health service organization shall submit a plan for evaluating a provider's or
 15 provider organization's ability to accept and manage risk to the department~~office~~
 16 for approval at least forty-five (45) days prior to the proposed date of the transfer of
 17 any risk.

- 18 (2) If a limited health service organization transfers risk to a provider:

19 (a) Not in compliance with the standards listed in its approved plan; or

20 (b) Prior to filing or receiving approval of its plan,

21 the commissioner~~executive director~~ may require the limited health service
 22 organization to retain additional reserves to cover the risk transferred.

23 ➔Section 1524. KRS 304.38A-110 is amended to read as follows:

- 24 (1) A person issued a single service organization certificate of authority in accordance
 25 with KRS 304.38-065 and holding the certificate of authority on July 15, 2002, shall
 26 be converted to a limited health service organization as defined in KRS 304.38A-
 27 010. At the next renewal of the certificate of authority, the person shall be issued a

1 certificate of authority to act as a limited health service organization if it meets the
 2 requirements for continuance of the certificate of authority. No certificate of
 3 authority to act as a single service organization shall be issued or renewed after July
 4 15, 2002.

- 5 (2) A single service organization holding a certificate of authority immediately prior to
 6 July 15, 2002, that is converted to a limited health service organization according to
 7 subsection (1) of this section shall continue to be required to meet the minimum net
 8 worth requirement of one hundred twenty-five thousand dollars (\$125,000) and
 9 shall comply with the risk-based capital requirements for health organizations in
 10 administrative regulations promulgated by the commissioner~~executive director~~ for
 11 health maintenance organizations and other health organizations.

12 ➔Section 1525. KRS 304.39-060 is amended to read as follows:

- 13 (1) Any person who registers, operates, maintains or uses a motor vehicle on the public
 14 roadways of this Commonwealth shall, as a condition of such registration,
 15 operation, maintenance or use of such motor vehicle and use of the public
 16 roadways, be deemed to have accepted the provisions of this subtitle, and in
 17 particular those provisions which are contained in this section.

- 18 (2) (a) Tort liability with respect to accidents occurring in this Commonwealth and
 19 arising from the ownership, maintenance, or use of a motor vehicle is
 20 "abolished" for damages because of bodily injury, sickness or disease to the
 21 extent the basic reparation benefits provided in this subtitle are payable
 22 therefor, or that would be payable but for any deductible authorized by this
 23 subtitle, under any insurance policy or other method of security complying
 24 with the requirements of this subtitle, except to the extent noneconomic
 25 detriment qualifies under paragraph (b) of this subsection.

- 26 (b) In any action of tort brought against the owner, registrant, operator or
 27 occupant of a motor vehicle with respect to which security has been provided

as required in this subtitle, or against any person or organization legally responsible for his or her acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000).

(c) Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.

(3) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his or her act or failure to act is intentional or done with the~~his~~ realization that it creates a grave risk of harm.

(4) Any person may refuse to consent to the limitations of his or her tort rights and liabilities as contained in this section. Such rejection must be in writing in a form to be prescribed by the Department~~Office~~ of Insurance and must have been executed and filed with the department~~office~~ at a time prior to any motor vehicle accident

for which such rejection is to apply. Such rejection form together with a reasonable explanation thereof shall be furnished by the reparation obligor with each policy to each prospective insurance applicant. Such rejection form shall affirmatively state in bold print that acceptance of this form of insurance denies the applicant the right to sue a negligent motorist unless certain requirements contained in the policy of insurance are met. Rejection by a person who is under legal disability shall be made on behalf of such person by his or her legal guardian, conservator or ~~his~~ natural parent. The failure of such guardian or a natural parent of a person under legal disability to file a rejection, within six (6) months from the date that this subtitle would otherwise become applicable to such person, shall be deemed to be an affirmative acceptance of all provisions of this subtitle. Provided, however, any person who, at the time of an accident, does not have basic reparation insurance but has not formally rejected such limitations of his or her tort rights and liabilities and has at such time in effect security equivalent to that required by KRS 304.39-110 shall be deemed to have fully rejected such limitations within meaning of this section for that accident only.

- (5) (a) Any rejection must be filed with the Department~~Office~~ of Insurance and shall become effective on the date of its filing until revoked;
- (b) Any rejection filed prior to June 30, 1980, shall be deemed to be effective from the date of its filing until revoked; and
- (c) Any revocation shall be in writing and shall become effective upon the date of its filing with the Department~~Office~~ of Insurance.
- (6) Every insurance company when issuing an automobile policy to a resident of this Commonwealth must inform the buyer in writing in a form to be prescribed by the insurance commissioner~~executive director~~ of his or her right to reject the limitations of ~~the~~~~his~~ tort rights and liabilities under this subtitle in the manner provided in subsections (4) and (7) of this section.

1 (7) Any rejection shall result in the full retention by the individual of his or her tort
 2 rights and ~~his~~ tort liabilities. Any person injured by a motor vehicle operator who
 3 has such rejection on file may claim ~~the~~~~his~~ full damages, including nonpecuniary
 4 damages, or, if such injured person has not rejected his or her own tort limitations,
 5 he or she may also claim basic reparation benefits from the appropriate security on
 6 the vehicle as established under KRS 304.39-050. If such provider of security is
 7 other than the one providing security for the operator who has rejected the
 8 limitations, such provider shall be subrogated to the rights of the injured person to
 9 the extent of reparation benefits paid against the owner and operator of the vehicle.

10 (8) No person who has rejected the tort limitations under this section, except as
 11 provided in subsection (9) of this section or KRS 304.39-140(5), may collect basic
 12 reparation benefits.

13 (9) Any owner or operator of a motorcycle, as defined in Kentucky Revised Statutes,
 14 may file a rejection as described in subsections (4) and (5) of this section, which
 15 will apply solely to the ownership and operation of a motorcycle but will not apply
 16 to injury resulting from the ownership, operation or use of any other type of motor
 17 vehicle.

18 ➔Section 1526. KRS 304.39-080 is amended to read as follows:

19 (1) "Security covering the vehicle" is the insurance or other security so provided. The
 20 vehicle for which the security is so provided is the "secured vehicle."

21 (2) "Basic reparation insurance" includes a contract, self-insurance, or other legal
 22 means under which the obligation to pay basic reparation benefits arises.

23 (3) This Commonwealth, its political subdivisions, municipal corporations, and public
 24 agencies may continuously provide, pursuant to subsection (6) of this section,
 25 security for the payment of basic reparation benefits in accordance with this subtitle
 26 for injury arising from maintenance or use of motor vehicles owned by those
 27 entities and operated with their permission.

1 (4) The United States and its public agencies and any other state, its political
 2 subdivisions, municipal corporation, and public agencies may provide, pursuant to
 3 subsection (6) of this section, security for the payment of basic reparation benefits
 4 in accordance with this subtitle for injury arising from maintenance or use of motor
 5 vehicles owned by those entities and operated with their permission.

6 (5) Except for entities described in subsections (3) and (4) of this section, every owner
 7 or operator of a motor vehicle registered in this Commonwealth or operated in this
 8 Commonwealth with an owner's permission shall continuously provide with respect
 9 to the motor vehicle while it is either present or registered in this Commonwealth,
 10 and any other person may provide with respect to any motor vehicle, by a contract
 11 of insurance or by qualifying as a self-insurer, security for the payment of basic
 12 reparation benefits in accordance with this subtitle and security for payment of tort
 13 liabilities, arising from maintenance or use of the motor vehicle. The owner of a
 14 motor vehicle who fails to maintain security on a motor vehicle in accordance with
 15 this subsection shall have his or her motor vehicle registration revoked in
 16 accordance with KRS 186A.040 and shall be subject to the penalties in KRS
 17 304.99-060. An owner who permits another person to operate a motor vehicle
 18 without security on the motor vehicle as required by this subtitle shall be subject to
 19 the penalties in KRS 304.99-060.

20 (6) Security may be provided by a contract of insurance or by qualifying as a self-
 21 insurer or obligated government in compliance with this subtitle.

22 (7) Self-insurance, subject to approval of the commissioner~~[executive-director]~~ of
 23 insurance, is effected by filing with the commissioner~~[executive-director]~~ in
 24 satisfactory form:

25 (a) A continuing undertaking by the owner or other appropriate person to pay tort
 26 liabilities or basic reparation benefits, or both, and to perform all other
 27 obligations imposed by this subtitle;

1 (b) Evidence that appropriate provision exists for prompt and efficient
 2 administration of all claims, benefits, and obligations provided by this
 3 subtitle; and

4 (c) Evidence that reliable financial arrangements, deposits, or commitments exist
 5 providing assurance, substantially equivalent to that afforded by a policy of
 6 insurance, complying with this subtitle, for payment of tort liabilities, basic
 7 reparation benefits, and all other obligations imposed by this subtitle.

8 (8) An entity described in subsection (3) or (4) of this section may provide security by
 9 lawfully obligating itself to pay basic reparation benefits in accordance with this
 10 subtitle.

11 (9) A person providing security pursuant to subsection (7) of this section is a "self-
 12 insurer." An entity described in subsection (3) or (4) of this section that has
 13 provided security pursuant to subsection (6) of this section is an "obligated
 14 government."

15 ➔Section 1527. KRS 304.39-100 is amended to read as follows:

16 (1) An insurance contract which purports to provide coverage for basic reparation
 17 benefits or is sold with representation that it provides security covering a motor
 18 vehicle has the legal effect of including all coverages required by this subtitle.

19 (2) An insurer authorized to transact or transacting business in this Commonwealth
 20 shall file with the commissioner~~[executive director]~~ of insurance as a condition of
 21 its continued transaction of business within this Commonwealth a form approved by
 22 the commissioner~~[executive director]~~ of insurance declaring that in any contract of
 23 liability insurance for injury, wherever issued, covering the ownership, maintenance
 24 or use of a motor vehicle other than motorcycles while the vehicle is in this
 25 Commonwealth shall be deemed to provide the basic reparation benefits coverage
 26 and minimum security for tort liabilities required by this subtitle, except a contract
 27 which provides coverage only for liability in excess of required minimum tort

1 liability coverage. Any nonadmitted insurer may file such form.

2 ➔Section 1528. KRS 304.39-117 is amended to read as follows:

3 (1) Each insurer issuing an insurance contract which provides security covering a motor
4 vehicle shall provide to the insured, in compliance with administrative regulations
5 promulgated by the department~~[office]~~, written proof in the form of an insurance
6 card that the insured has in effect an insurance contract providing security in
7 conformity with this subtitle.

8 (2) The owner shall keep the card in his or her motor vehicle as prima facie evidence,
9 except as provided in subsection (3) of this section, that the required security is
10 currently in full force and effect, and shall show the card to a peace officer upon
11 request.

12 (3) On and after January 1, 2006, as to personal motor vehicles as defined in KRS
13 304.39-087, the card and the database created by KRS 304.39-087 shall be evidence
14 to a peace officer who requests the card if the peace officer has access to the
15 database through AVIS. If AVIS does not list the vehicle identification number of
16 the personal motor vehicle as an insured vehicle, the peace officer may accept an
17 insurance card as evidence that the required security is currently in full force and
18 effect on the personal motor vehicle if the card was effective no more than forty-
19 five (45) days before the date on which the peace officer requests the card.

20 ➔Section 1529. KRS 304.39-150 is amended to read as follows:

21 Terms and conditions of contracts and certificates or other evidence of insurance
22 coverage sold or issued in this Commonwealth providing motor vehicle tort liability,
23 basic reparation, and added reparation insurance coverages, and of forms used by insurers
24 offering these coverages, are subject to approval and regulation by the
25 commissioner~~[executive director]~~ of insurance. The commissioner~~[executive director]~~
26 shall approve only terms and conditions consistent with the purposes of this subtitle and
27 fair and equitable to all persons whose interests may be affected.

➔Section 1530. KRS 304.39-170 is amended to read as follows:

- (1) Reparation obligors providing basic reparation insurance in this Commonwealth may organize and maintain, subject to approval and regulation by the commissioner~~executive director~~ of insurance, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this subtitle. If they do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the commissioner~~executive director~~ of insurance to be consistent with this subtitle, the commissioner~~he~~ shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in this Commonwealth shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.

- (2) The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he or she had issued a policy of basic reparation insurance complying with this subtitle applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

➔Section 1531. KRS 304.39-290 is amended to read as follows:

- (1) There is created a nonprofit unincorporated legal entity to be known as the Kentucky Insurance Arbitration Association to provide a mechanism for the reimbursement, among reparation obligors of losses paid as basic or added reparation benefits, based solely on the law of torts without regard to subsections (1), (2), and (3) of KRS 304.39-060.

- 1 (2) All basic reparation obligors shall be and remain members of the association as a
2 condition of their authority to transact business in this Commonwealth.
- 3 (3) The association shall perform its functions under a plan of operation established and
4 approved under subsection (5) and shall exercise its powers through a board of
5 directors established under subsection (4) hereof.
- 6 (4) The board of directors of the association shall consist of not less than five (5) nor
7 more than ten (10) persons serving terms as established in the plan of operation.
8 They shall be selected by member obligors subject to the approval of the
9 commissioner~~[executive director]~~. If no members have been selected and approved
10 prior to July 1, 1974, the commissioner~~[executive director]~~ shall appoint the initial
11 members of the board. In approving selections to the board, the
12 commissioner~~[executive director]~~ shall consider, among other things, whether all
13 member obligors are fairly represented.
- 14 Each member of the board shall designate qualified experienced claimspersons from
15 the member's company, who upon approval by the commissioner~~[executive~~
16 ~~director]~~, may serve as his or her alternates for the purpose of claims arbitration.
- 17 (5) The association shall submit to the commissioner~~[executive director]~~ a plan of
18 operation and any amendments thereto necessary, or suitable to assure the fair,
19 reasonable, and equitable administration of the association. The plan shall become
20 effective upon approval in writing by the commissioner~~[executive director]~~:
- 21 (a) All reparation obligors shall comply with the provisions of the plan of
22 operation;
- 23 (b) The plan of operation shall:
- 24 1. Establish procedures whereby all the powers and duties of the
25 association will be performed;
- 26 2. Establish minimum requirements for the initial submission of a case for
27 reimbursement or arbitration;

- 1 3. Establish minimum requirements beneath which reimbursements shall
- 2 not be made in order that there be fair allocation of significant losses and
- 3 the elimination of unnecessary costs in the reimbursement mechanism;
- 4 4. Encourage voluntary reimbursement procedures between reparation
- 5 obligors so that resort to arbitration shall be as infrequent as possible;
- 6 5. Recognize that fair allocation of loss between commercial and
- 7 noncommercial motor vehicles may require different minimum
- 8 requirements than when the loss is between two (2) or more
- 9 noncommercial vehicles;
- 10 6. Establish regular places and times for meetings;
- 11 7. Establish procedures for records to be maintained on all cases presented
- 12 for arbitration and dispositions thereof;
- 13 8. Establish procedures for compensation to reparation obligors for travel
- 14 related expense and the fair value of the time devoted by their employees
- 15 as a director or alternate in performance of duties for the association;
- 16 9. Establish procedures for adequately and equitably financing the cost of
- 17 the association among members; and
- 18 10. Contain additional provisions necessary or proper for execution of the
- 19 powers and duties of the association.
- 20 (6) The association shall be subject to examination and regulation by the
- 21 commissioner~~[executive director]~~:
- 22 (a) The board of directors shall submit to the commissioner~~[executive director]~~,
- 23 not later than March 30 of each year, a report on its activities for the preceding
- 24 calendar year;
- 25 (b) The board of directors shall promptly notify the commissioner~~[executive~~
- 26 director] whenever it appears that any member insurer has failed or refused to
- 27 comply with an arbitration decision or has shown a protracted tendency to

1 decline a significant number of meritorious claims presented to it prior to
2 initiation of arbitration proceedings.

3 (7) The association shall be exempt from payment of all fees, licenses, and taxes levied
4 by this Commonwealth or any of its subdivisions except taxes on real or personal
5 property.

6 (8) There shall be no liability on the part of and no cause of action of any nature shall
7 arise against any member insurer, the association or its agents or employees, the
8 board of directors, or the commissioner~~[executive director]~~ or his or her
9 representative for any action taken by them in the performance of their powers and
10 duties under this section.

11 ➔Section 1532. KRS 304.39-300 is amended to read as follows:

12 The commissioner~~[executive director of insurance]~~ may adopt rules to provide effective
13 administration of this subtitle which are consistent with the purposes of this subtitle and
14 fair and equitable to all persons whose interests may be affected.

15 ➔Section 1533. KRS 304.39-330 is amended to read as follows:

16 (1) The rates for bodily injury liability in the amounts specified in KRS 304.39-110
17 combined with the rates for uninsured motorists coverage in equal amounts and for
18 basic reparation benefits coverage shall be reduced by each insurer by not less than
19 ten percent (10%) as of the effective date of this subtitle from the rates in effect for
20 each such insurer immediately prior to such date for bodily injury liability in the
21 amounts specified in KRS 304.39-110 combined with the rates for uninsured
22 motorists coverage and the rates charged for one thousand dollars (\$1,000) per
23 person medical expense coverage. Such reduced rates shall remain in effect for at
24 least one (1) year, and thereafter shall not be increased without the approval of the
25 commissioner~~[executive director of insurance]~~ after hearing. There shall be no
26 exception to the requirements of this section unless the commissioner~~[executive~~
27 ~~director]~~ shall find that the use of such reduced rates required as to any insurer will

1 result in rates which are inadequate under Chapter 304 of the Kentucky Revised
2 Statutes.

- 3 (2) The provisions of subsection (1) shall not apply to any policy covering a motor
4 vehicle for which a person who would otherwise be a basic reparation insured has
5 rejected the limitations upon his or her tort rights and liabilities in accordance with
6 the provisions of KRS 304.39-060(4).

7 ➔Section 1534. KRS 304.40-020 is amended to read as follows:

8 As used in KRS 304.40-030 to 304.40-140:

- 9 (1) "Association" means the joint underwriting association established pursuant to the
10 provisions of KRS 304.40-030 to 304.40-140.

- 11 (2) "Medical malpractice insurance" means insurance as defined in KRS 304.5-
12 070(1)(j).

- 13 (3) "~~Commissioner~~~~[Executive director]~~" means the commissioner~~[executive director]~~
14 of the Department of Insurance.

- 15 (4) "Net direct premiums" means gross direct premiums written on the lines of
16 insurance set forth in KRS 304.40-030(1), as computed by the
17 commissioner~~[executive director of insurance]~~, less return premiums for the unused
18 or unabsorbed portions of premium deposits.

19 ➔Section 1535. KRS 304.40-030 is amended to read as follows:

- 20 (1) A temporary joint underwriting association is hereby created, consisting of all
21 insurers authorized to write and engage in writing in this state on a direct basis the
22 following lines of insurance, as reported in the companies' annual statements:

- 23 (a) Workers' compensation;
24 (b) Liability other than auto;
25 (c) Private passenger auto liability;
26 (d) Commercial auto liability;
27 (e) The liability portion of commercial multiperil policies; and

(f) Health insurance including prepaid hospital services contracts and group or blanket health insurance.

Every such insurer shall remain a member of the joint underwriting association as a condition of its authority to continue to transact such kinds of insurance in this state.

(2) The implementation of the operation of the joint underwriting association shall become effective upon the order of the commissioner~~[executive-director]~~. The commissioner~~[executive-director]~~ shall not order the association to commence underwriting operations until he or she, after due hearing and investigation, has determined that medical malpractice insurance cannot be made available in the voluntary market for any of the categories defined in subsection (3)(a), (b), and (c) of this section. The joint underwriting association shall remain in effect for a period of no longer than two and one-half (2-1/2) years from the date that it commences underwriting operations.

(3) For the purposes of the joint underwriting association, three (3) health care provider categories shall be established:

- (a) Physicians and surgeons;
- (b) Hospitals; and
- (c) All other licensed health care providers.

The commissioner~~[executive-director]~~ shall hold separate hearings and conduct investigations on each of the three (3) categories of health care providers and determine for each category whether or not medical malpractice insurance is readily available in the voluntary market. If the commissioner~~[executive-director]~~ finds that insurance is not readily available for any of the categories of health care providers, the joint underwriting association shall commence underwriting operations for that category.

KRS 304.40-030 to 304.40-140 shall not preclude any licensed health care provider from procuring medical malpractice insurance from the voluntary market.

1 If the commissioner~~executive director~~ determines at any time that medical
 2 malpractice insurance is readily available in the voluntary market for either (a)
 3 physicians and surgeons, (b) hospitals, or (c) all other licensed health care
 4 providers, the association shall thereby cease its underwriting operations for such
 5 category of medical malpractice insurance which the commissioner~~he~~ has
 6 determined is readily available in the voluntary market.

7 (4) The association shall, pursuant to the provisions of KRS 304.40-030 to 304.40-140
 8 and the plan of operation with respect to medical malpractice insurance, have the
 9 power on behalf of its members:

- 10 (a) To issue, or to cause to be issued, policies of insurance to applicants,
 11 including incidental coverages and subject to limitations as specified in the
 12 plan of operation, but not to exceed one hundred thousand dollars (\$100,000)
 13 for each claimant under one (1) policy and one million dollars (\$1,000,000)
 14 for all claimants under one (1) policy in any one (1) year;
- 15 (b) To underwrite such insurance and to adjust and pay losses with respect
 16 thereto, or to appoint service companies to perform those functions;
- 17 (c) To assume reinsurance from its members;
- 18 (d) To cede reinsurance; and
- 19 (e) To negotiate and obtain in the voluntary market medical malpractice insurance
 20 for any health care provider to whom the association has issued or caused to
 21 be issued a policy of medical malpractice insurance with the foregoing limits.

22 ➔Section 1536. KRS 304.40-040 is amended to read as follows:

- 23 (1) Within forty-five (45) days following the order of the commissioner~~executive~~
 24 ~~director~~ implementing the operation of the association, the directors of the
 25 association shall submit to the commissioner~~executive director~~ for ~~his~~ review a
 26 proposed plan of operation, consistent with the provisions of this subtitle.
- 27 (2) The plan of operation shall provide for economic, fair, and nondiscriminatory

administration and for the prompt and efficient provision of medical malpractice insurance; and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall be subject to approval by the commissioner~~[executive director]~~ after consultation with the members of the association, representatives of the public, and other affected individuals and organizations. If the commissioner~~[executive director]~~ disapproves all or any part of the proposed plan of operation, the directors shall within fifteen (15) days submit for review an appropriate revised plan of operation or part thereof. If the directors fail to do so, the commissioner~~[executive director]~~ shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the commissioner~~[executive director]~~ shall become effective upon order of the commissioner~~[executive director]~~.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner~~[executive director]~~, or shall be made at the direction of the commissioner~~[executive director]~~.

→ Section 1537. KRS 304.40-050 is amended to read as follows:

(1) All policies issued by the association shall be written for the term of one (1) year. The directors of the association may elect to issue policies on an occurrence basis or a claims made basis. No policy form shall be used by the association unless it has been filed with the commissioner~~[executive director]~~ and either (a) the commissioner~~[he]~~ has approved it, or (b) thirty (30) days has lapsed and the

1 commissioner~~[he]~~ has not disapproved it in accordance with KRS Chapter 304,
2 Subtitle 14.

3 (2) Cancellation of the association's policies shall be governed by the laws and
4 regulations governing the cancellation of other policies of casualty insurance,
5 except that the association may also cancel any of its policies in the event of
6 nonpayment of any stabilization reserve fund charged, by mailing or delivering to
7 the insured at the address shown on the policy, written notice stating when not less
8 than ten (10) days thereafter cancellation shall be effective.

9 (3) The rates, rating plans, rating rules, rating classifications and territories applicable
10 to the insurance written by the association and statistics relating thereto shall be
11 subject to Chapter 304, Subtitle 13 of the Kentucky Revised Statutes, giving due
12 consideration to the past and prospective loss and expense experience for medical
13 malpractice insurance written and to be written in this state, trends in the frequency
14 and severity of losses, the investment income of the association, and such other
15 information as the commissioner~~[executive-director]~~ may require. All rates shall be
16 on an actuarially sound basis, giving due consideration to the group retrospective
17 rating plan and the stabilization reserve fund, and shall be calculated to be self-
18 supporting. The commissioner~~[executive-director]~~ shall make available to the
19 association the loss and expense experience of insurers previously writing medical
20 malpractice insurance in this state.

21 (4) All policies issued by the association shall be subject to a nonprofit group
22 retrospective rating plan to be approved by the commissioner~~[executive-director]~~,
23 under which the final premium for all policyholders of the association as a group
24 will be equal to the administrative expenses, loss and loss adjustment expenses and
25 taxes, plus a reasonable allowance for contingencies and servicing. Policyholders
26 shall be given full credit for all investment income, net of expenses and a
27 reasonable management fee on policyholder supplied funds. The standard premium

1 before retrospective adjustment for each policy issued by the association shall be
 2 established on the basis of the association's rates, rating plans, rating rules, rating
 3 classifications, and territories then in effect. The maximum final premium for all
 4 policyholders of the association as a group shall be limited as provided in KRS
 5 304.40-060(4). Since the business of the association is subject to the nonprofit
 6 group retrospective rating plan required by this subsection, there shall be a
 7 presumption that the rates filed and premiums for the business of the association are
 8 not excessive.

9 (5) The commissioner~~[executive director]~~ shall examine the business of the association
 10 as often as he or she deems appropriate to assure that the group retrospective rating
 11 plan is being operated in a manner consistent with this section. If he or she finds
 12 that it is not being so operated, he or she shall issue an order to the association,
 13 specifying in what respects its operation is deficient and stating what corrective
 14 action shall be taken.

15 (6) The association shall certify to the commissioner~~[executive director]~~ the estimated
 16 amount of any deficit remaining after the stabilization reserve fund has been
 17 exhausted in payment of the maximum final premium for all policyholders of the
 18 association. Within sixty (60) days after such certification, the
 19 commissioner~~[executive director]~~ shall authorize the members of the association to
 20 commence recoupment of their respective shares of the deficit by applying a
 21 surcharge to be determined by the association at a rate not to exceed two percent
 22 (2%) of the annual premiums on future policies affording those kinds of insurance
 23 which form the basis for their participation in the association under procedures
 24 established by the association. The association shall amend the amount of its
 25 certification of deficit to the commissioner~~[executive director]~~ as the values of its
 26 incurred losses become finalized, and the members of the association shall amend
 27 their recoupment procedure accordingly.

1 (7) In the event that sufficient funds are not available for the sound financial operation
 2 of the association, pending recoupment as provided in subsection (6) of this section,
 3 all members shall, on a temporary basis, contribute to the financial requirements of
 4 the association in the manner provided for in KRS 304.40-080. Any such
 5 contribution shall be reimbursed to the members by recoupment as provided in
 6 subsection (6) of this section.

7 ➔ Section 1538. KRS 304.40-060 is amended to read as follows:

8 (1) There is hereby created a stabilization reserve fund which shall be administered by
 9 three (3) directors, one (1) of whom shall be the commissioner~~executive director~~
 10 or the commissioner's~~his~~ deputy. The remaining two (2) directors shall be
 11 appointed by the commissioner~~executive director~~. One (1) shall be a
 12 representative of the association; the other a representative of its policyholders. The
 13 directors shall serve without salary, but shall be reimbursed for actual and necessary
 14 expenses incurred in the performance of their duties when approved by the
 15 commissioner~~executive director~~.

16 (2) Each policyholder shall pay to the association a stabilization reserve fund charge
 17 equal to one-third (1/3) of each premium payment due for insurance through the
 18 association. Such charge shall be separately stated in the policy. The association
 19 shall cancel the policy of any policyholder who fails to pay the stabilization reserve
 20 fund charge.

21 (3) The association shall promptly pay to the trustee of the fund all stabilization reserve
 22 fund charges which it collects from its policyholders and any retrospective premium
 23 refunds payable under the group retrospective rating plan authorized by KRS
 24 304.40-050.

25 (4) All moneys received by the fund shall be held in trust by a corporate trustee selected
 26 by the directors. The trustee may invest the trust fund, subject to the approval of the
 27 directors. All investment income shall be credited to the fund. All expenses of

1 administration of the fund shall be charged against the fund. The trust fund shall be
2 used solely for the purpose of discharging when due any retrospective premium
3 charges payable by policyholders of the association under the group retrospective
4 rating plan authorized by KRS 304.40-050. Payment of retrospective premium
5 charges shall be made by the directors upon certification to them by the association
6 of the amount due. If the trust fund is finally exhausted in payment of retrospective
7 premium charges, all liability and obligations of the association's policyholders with
8 respect to the payment of retrospective premium charges shall thereupon terminate
9 and shall be conclusively presumed to have been discharged. Any moneys
10 remaining in the fund after all such retrospective premium charges have been paid
11 shall be returned to policyholders under procedures authorized by the directors.

12 ➔Section 1539. KRS 304.40-075 is amended to read as follows:

13 (1) As used in this section, unless the context requires otherwise:

14 (a) "Charitable health care provider" means any person, agency, clinic, or facility
15 licensed or certified by the Commonwealth, or under a comparable provision
16 of law of another state, territory, district, or possession of the United States,
17 engaged in the rendering of medical care or dentistry without compensation or
18 charge, and without expectation of compensation or charge, to the individual,
19 without payment or reimbursement by any governmental agency or insurer.

20 "Charitable health care provider" means those persons, agencies, clinics, or
21 facilities providing primary care medicine and performing no invasive or
22 surgical procedures, and those persons, agencies, clinics, or facilities
23 providing services within the dentist's scope of practice under KRS Chapter
24 313;

25 (b) "Medical malpractice insurer" means every person or entity engaged as
26 principal and as indemnitor, surety, or contractor in the business of entering
27 into contracts to provide medical professional liability insurance, except an

entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and

(c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.

(2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.

(3) (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services.

(b) The Department~~[Office]~~ of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:

1. Name and address of the charitable health care provider;
2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;

- 1 3. The expected number of patients to be provided charitable health care
- 2 services in the year for which the insurer will offer malpractice
- 3 coverage;
- 4 4. The charitable health care provider's acknowledgment that the insurer's
- 5 risk management and loss prevention policies shall be followed;
- 6 5. A copy of the registration filed with the Cabinet for Health and Family
- 7 Services under KRS 216.941; and
- 8 6. A copy of the medical malpractice policy, declaration page, and any
- 9 other documentation the commissioner~~[executive director]~~ may deem
- 10 necessary to determine the proper amount of premiums and taxes to be
- 11 reimbursed.
- 12 (c) Persons insured under this section shall be required to comply with the same
- 13 risk management and loss prevention policies which the insurer imposes upon
- 14 its other insureds.
- 15 (d) Any premium refund for medical professional liability insurance issued under
- 16 subsection (2) of this section received for any reason by the charitable health
- 17 care provider shall be promptly remitted to the department~~[office]~~ for
- 18 transmittal to the general fund.
- 19 (4) This section shall only apply to charitable health care providers and persons
- 20 volunteering to perform medical services for charitable health care providers who
- 21 are not otherwise covered by any policy of medical professional liability insurance
- 22 for the charitable health care services provided, and that meet the terms for
- 23 eligibility established pursuant to this section.
- 24 (5) Coverage offered to charitable health care providers and persons volunteering at
- 25 charitable health care providers shall be at least as broad as the coverage offered by
- 26 the insurer to other noncharitable health care providers or facilities and to medical
- 27 professionals working at noncharitable health care facilities.

- 1 (6) The Department~~[Office]~~ of Insurance shall retrospectively review on an annual
 2 basis the premiums paid pursuant to this section as opposed to the expenses
 3 incurred by the insurers covering risks under this section to determine if the profits
 4 made for those risks were consistent with reasonable loss ratio guidelines. If the
 5 determination is made that the profits were not consistent with reasonable loss ratio
 6 guidelines, the Department~~[Office]~~ of Insurance shall determine the amount of the
 7 premiums to be refunded to the Commonwealth.
- 8 (7) The Cabinet for Health and Family Services shall make available to the
 9 Department~~[Office]~~ of Insurance information on its registration of charitable health
 10 care providers for the purpose of obtaining medical malpractice insurance.
- 11 (8) The Department~~[Office]~~ of Insurance shall not provide medical malpractice
 12 insurance as specified in subsection (3)(a) of this section to a charitable health care
 13 provider who has not registered with the Cabinet for Health and Family Services
 14 under KRS 216.941.

15 ➔Section 1540. KRS 304.40-080 is amended to read as follows:

16 All insurers which are members of the association shall participate in its writings,
 17 expenses, servicing, allowance, management fees, and losses in the proportion that the net
 18 direct premiums of each such member, excluding that portion of premiums attributable to
 19 the operation of the association, written during the preceding calendar year, bears to the
 20 aggregate net direct premiums written in this state by all members of the association.
 21 Each insurer's participation in the association shall be determined annually on the basis of
 22 such net direct premiums written during the preceding calendar year, as reported in the
 23 annual statements and other reports filed by the insurer with the commissioner~~[executive~~
 24 ~~director]~~.

25 ➔Section 1541. KRS 304.40-090 is amended to read as follows:

26 The association shall be governed by a board of thirteen (13) directors. Five (5) directors
 27 shall be elected by the insurance companies which are members of the association, at a

1 meeting of the member companies at a time and place designated by the
 2 commissioner~~[executive director]~~, by cumulative voting of the member companies,
 3 whose vote shall be weighted in accordance with each member's net direct premiums
 4 written during the preceding calendar year. One (1) of these five (5) directors shall be
 5 from a member company domiciled in Kentucky. The commissioner~~[executive director]~~
 6 shall appoint seven (7) directors, one (1) named by the Kentucky Medical Association;
 7 one (1) named by the Kentucky Bar Association; one (1) named by the Kentucky Hospital
 8 Association; one (1) who is a licensed resident property and casualty agent in Kentucky;
 9 and three (3) knowledgeable members of the public at large, who have no interest in any
 10 of the foregoing categories. The commissioner~~[executive director]~~ or the
 11 commissioner's~~[his]~~ designee shall serve as a director.

12 ➔Section 1542. KRS 304.40-100 is amended to read as follows:

13 (1) Any applicant to the association, any person insured pursuant to KRS 304.40-030 to
 14 304.40-140, or their representatives, or any affected insurer, may appeal to the
 15 commissioner~~[executive director]~~ within thirty (30) days after any rule, action, or
 16 decision by or on behalf of the association, with respect to those items the plan of
 17 operation defines as appealable matters. Upon appeal, an administrative hearing
 18 shall be conducted in accordance with KRS Chapter 13B.

19 (2) All final orders of the commissioner~~[executive director]~~ made pursuant to this
 20 subtitle are subject to appeal to the Franklin Circuit Court in accordance with KRS
 21 Chapter 13B.

22 ➔Section 1543. KRS 304.40-110 is amended to read as follows:

23 The association shall file in the office of the commissioner~~[executive director]~~ annually,
 24 on or before the first day of each March, a statement containing information with respect
 25 to its transaction, condition, operations, and affairs during the preceding year. Such
 26 statement shall contain such matters and information as are prescribed and shall be in
 27 such form as is approved by the commissioner~~[executive director]~~. The

1 commissioner~~[executive-director]~~ may at any time require the association to furnish
 2 additional information with respect to its transactions, condition, or any matter connected
 3 therewith considered to be material and of assistance in evaluating the scope, operation,
 4 and experience of the association.

5 ➔Section 1544. KRS 304.40-120 is amended to read as follows:

6 The commissioner~~[executive-director]~~ shall make an examination into the affairs of the
 7 association at least annually. Such examination shall be conducted and the report thereon
 8 filed in the manner prescribed in KRS Chapter 304, subtitle 2. The expenses of such
 9 examinations shall be paid by the association in the manner prescribed by that subtitle.

10 ➔Section 1545. KRS 304.40-130 is amended to read as follows:

11 There shall be no liability on the part of, and no cause of action of any nature shall arise
 12 against the association, the commissioner~~[executive-director]~~ or the commissioner's~~[his]~~
 13 authorized representatives or any other person or organization, for any statements or
 14 actions made in good faith by them during any proceedings or concerning any matters
 15 within the scope of KRS 304.40-030 to 304.40-140.

16 ➔Section 1546. KRS 304.40-260 is amended to read as follows:

17 As used in KRS 304.40-250 to 304.40-320, the following words and terms shall be
 18 defined as follows:

19 (1) "Health care provider" means any physician, osteopath, dentist, podiatrist, nurse or
 20 nurse's assistant, certified registered nurse anesthetist, physical or occupational
 21 therapist, or psychologist, licensed to practice health care in this state; any hospital,
 22 medical clinic, medical foundation, health maintenance organization, extended care
 23 facility, intermediate care facility, nursing home, emergency treatment center,
 24 outpatient medical or surgical center, frontier nursing service, or any other facility
 25 or service licensed under any act of this state to provide health care within this state;
 26 or any officer, director, employer agent thereof; and any corporation, partnership or
 27 sole proprietorship which directly provides medical services to its employees;

- 1 (2) "~~Commissioner~~~~[Executive director]~~" means the ~~commissioner~~~~[executive director]~~
 2 of ~~the Department of~~ Insurance;
 3 (3) "Patient" means a natural person who receives health care from a licensed health
 4 care provider under a contract, express or implied;
 5 (4) "Claimant" means the patient or spouse, parent, guardian, trustee, or other
 6 authorized agent of the patient;
 7 (5) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or
 8 omission proximately causing injury or damage to another;
 9 (6) "Malpractice" means any tort or breach of contract based on health care or
 10 professional services rendered, or which should have been rendered, by a health
 11 care provider to the patient;
 12 (7) "Health care" means any act, or treatment performed or furnished, or which should
 13 have been performed or furnished, by any health care provider to a patient during
 14 that patient's care, treatment, or confinement for a physical or mental condition;
 15 (8) "Malpractice insurer" means any insurance authority or any insurance company
 16 properly engaged in the practice of writing malpractice liability insurance under
 17 authority of the ~~commissioner~~~~[executive director]~~ of insurance.

18 ➔Section 1547. KRS 304.40-310 is amended to read as follows:

- 19 (1) All malpractice claims settled or adjudicated to final judgment against a health care
 20 provider shall be reported to the ~~commissioner~~~~[executive director]~~ of insurance by
 21 the malpractice insurer of the health care provider or the health care provider if self-
 22 insured, within sixty (60) days following final settlement or disposition of the claim.
 23 The report to the ~~commissioner~~~~[executive director]~~ shall recite the following:
 24 (a) Name and address of health care provider involved;
 25 (b) Name and address of claimant;
 26 (c) Nature of the claim;
 27 (d) Damages asserted and alleged injury; and

- 1 (e) The amount of any settlement or judgment.
- 2 (2) The commissioner~~{executive director}~~ of insurance shall forward the name of every
 3 health care provider against whom a settlement is made or judgment is rendered to
 4 the appropriate licensure board or regulatory agency for review of the fitness of the
 5 health care provider to practice his or her profession.
- 6 (3) (a) At any time before a jury is empanelled or before a trial is commenced by a
 7 court without a jury, no settlement or other compromise of any claim for
 8 malpractice shall be effective between a claimant and the fund unless the
 9 proposed settlement or other compromise shall have been approved by the
 10 commissioner~~{executive director}~~.
- 11 (b) The commissioner~~{executive director}~~ shall prescribe by rule the procedure
 12 for submission of settlements or other compromises involving the fund.
- 13 (c) If the commissioner~~{executive director}~~ shall disapprove a proposed
 14 settlement or other compromise involving the fund, the claimant may
 15 thereafter pursue his or her interests in a court of appropriate jurisdiction and
 16 the action of the commissioner~~{executive director}~~ shall not be admissible
 17 upon any trial of the action.
- 18 (d) Notwithstanding the provisions of KRS 413.140, when an offer to
 19 compromise or settle has been filed with the commissioner~~{executive~~
 20 ~~director}~~ the statute of limitations made and provided for the commencement
 21 of an action for malpractice shall not bar any such action until ninety (90) days
 22 after notice to the parties of the commissioner's~~{executive director's}~~
 23 disapproval of any proposed settlement or other compromise.

24 ➔Section 1548. KRS 304.41-020 is amended to read as follows:

25 As used in this subtitle:

- 26 (1) "Association" means the Joint Underwriting Association established pursuant to the
 27 provisions of this subtitle.

1 (2) "Legal professional liability insurance" means insurance as defined in KRS 304.5-
2 070(1)(j).

3 (3) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~
4 of the Department of Insurance.

5 (4) "Net direct premiums" means gross direct premiums written on the lines of
6 insurance set forth in KRS 304.41-030(1) as computed by the
7 commissioner~~[executive director]~~ of insurance, less return premiums for the unused
8 or unabsorbed portions of premium deposits.

9 ➔Section 1549. KRS 304.41-030 is amended to read as follows:

10 (1) A temporary Joint Underwriting Association is created, consisting of all insurers
11 authorized to write and engage in writing in the Commonwealth on a direct basis
12 the following lines of insurance, as reported in the companies' annual statements:

- 13 (a) Workers' compensation;
- 14 (b) Liability other than auto;
- 15 (c) Private passenger auto liability;
- 16 (d) Commercial auto liability; and
- 17 (e) The liability portion of commercial multi-peril policies.

18 Every such insurer shall remain a member of the Joint Underwriting Association as
19 a condition of its authority to continue to transact such kinds of insurance in the
20 Commonwealth.

21 (2) The implementation of the operation of the Joint Underwriting Association shall
22 become effective upon the order of the commissioner~~[executive director]~~. The
23 commissioner~~[executive director]~~ shall not order the association to commence
24 underwriting operations until the commissioner~~[he]~~, after due hearing and
25 investigation, has determined that legal professional liability insurance cannot be
26 made available in the voluntary market. The Joint Underwriting Association shall
27 remain in effect for a period of no longer than two and one-half (2 1/2) years from

1 the date that it commences underwriting operations.

2 This subtitle shall not preclude any attorney at law from procuring legal
3 professional liability insurance from the voluntary market.

4 If the commissioner~~[executive director]~~ determines at any time that legal
5 professional liability insurance is readily available in the voluntary market, the
6 association shall thereby cease its underwriting operations.

7 (3) The association shall, pursuant to the provisions of this subtitle and the plan of
8 operation with respect to legal professional liability insurance, have the power on
9 behalf of its members:

10 (a) To issue, or to cause to be issued, policies of insurance to applicants,
11 including incidental coverages and subject to limitations as specified in the
12 plan of operation, but not to exceed five hundred thousand dollars (\$500,000)
13 for each claimant under one (1) policy and one million dollars (\$1,000,000)
14 for all claimants under one (1) policy in any one (1) year;

15 (b) To underwrite such insurance and to adjust and pay losses with respect
16 thereto, or to appoint service companies to perform those functions;

17 (c) To assume reinsurance from its members;

18 (d) To cede reinsurance; and

19 (e) To negotiate and obtain in the voluntary market legal professional liability
20 insurance with limits in excess of the foregoing limits for any attorney-at-law
21 to whom the association has issued or caused to be issued a policy of legal
22 professional liability insurance.

23 ➔Section 1550. KRS 304.41-040 is amended to read as follows:

24 (1) Within forty-five (45) days following the order of the commissioner~~[executive~~
25 ~~director]~~ implementing the operation of the association, the directors of the
26 association shall submit to the commissioner~~[executive director]~~ for his or her
27 review a proposed plan of operation, consistent with the provisions of this subtitle.

1 (2) The plan of operation shall provide for economic, fair, and nondiscriminatory
 2 administration and for the prompt and efficient provision of legal professional
 3 liability insurance; and shall contain other provisions including, but not limited to,
 4 preliminary assessment of all members for initial expenses necessary to commence
 5 operations, establishment of necessary facilities, management of the association,
 6 assessment of members to defray losses and expenses, commission arrangements,
 7 reasonable and objective underwriting standards, acceptance and cession of
 8 reinsurance, appointment of servicing carriers or other servicing arrangements and
 9 procedures for determining amounts of insurance to be provided by the association.

10 (3) The plan of operation shall be subject to approval by the commissioner~~[executive~~
 11 ~~director]~~ after consultation with the members of the association, representatives of
 12 the public, and other affected individuals and organizations. If the
 13 commissioner~~[executive director]~~ disapproves all or any part of the proposed plan
 14 of operation, the directors shall within fifteen (15) days submit for review an
 15 appropriate revised plan of operation or part thereof. If the directors fail to do so,
 16 the commissioner~~[executive director]~~ shall promulgate a plan of operation or part
 17 thereof, as the case may be. The plan of operation approved or promulgated by the
 18 commissioner~~[executive director]~~ shall become effective upon order of the
 19 commissioner~~[executive director]~~.

20 (4) Amendments to the plan of operation may be made by the directors of the
 21 association, subject to the approval of the commissioner~~[executive director]~~, or
 22 shall be made at the direction of the commissioner~~[executive director]~~.

23 ➔Section 1551. KRS 304.41-050 is amended to read as follows:

24 (1) All policies issued by the association shall be written for the term of one (1) year.
 25 The directors of the association may elect to issue policies on an occurrence basis or
 26 a claims made basis. No policy form shall be used by the association unless it has
 27 been filed with the commissioner~~[executive director]~~ and either (a) the

1 commissioner~~[he]~~ has approved it, or (b) thirty (30) days has lapsed and the
 2 commissioner~~[he]~~ has not disapproved it in accordance with KRS Chapter 304,
 3 Subtitle 14.

4 (2) Cancellation of the association's policies shall be governed by the laws and
 5 regulations governing the cancellation of other policies of casualty insurance,
 6 except that the association may also cancel any of its policies in the event of
 7 nonpayment of any stabilization reserve fund charge, by mailing or delivering to the
 8 insured at the address shown on the policy, written notice stating when not less than
 9 ten (10) days thereafter cancellation shall be effective.

10 (3) The rates, rating plan, rating rules, rating classifications and territories applicable to
 11 the insurance written by the association and statistics relating thereto shall be
 12 subject to KRS Chapter 304, Subtitle 13, giving due consideration to the past and
 13 prospective loss and expense experience for legal professional liability insurance
 14 written and to be written in this state, trends in the frequency and severity of losses,
 15 the investment income of the association, and such other information as the
 16 commissioner~~[executive director]~~ may require. All rates shall be on an actuarially
 17 sound basis, giving due consideration to the group retrospective rating plan and the
 18 stabilization reserve fund, and shall be calculated to be self-supporting. The
 19 commissioner~~[executive director]~~ shall make available to the association the loss
 20 and expense experience of insurers previously writing legal professional liability
 21 insurance in this state.

22 (4) All policies issued by the association shall be subject to a nonprofit group
 23 retrospective rating plan to be approved by the commissioner~~[executive director]~~,
 24 under which the final premium for all policyholders of the association as a group
 25 will be equal to the administrative expenses, loss and loss adjustment expenses and
 26 taxes, plus a reasonable allowance for contingencies and servicing. Policyholders
 27 shall be given full credit for all investment income, net of expenses and a

1 reasonable management fee on policyholder supplied funds. The standard premium
 2 before retrospective adjustment for each policy issued by the association shall be
 3 established on the basis of the association's rates, rating plans, rating rules, rating
 4 classifications, and territories then in effect. The maximum final premium for all
 5 policyholders of the association as a group shall be limited as provided in KRS
 6 304.41-060(4). Since the business of the association is subject to the nonprofit
 7 group retrospective rating plan required by this subsection, there shall be a
 8 presumption that the rates filed and premiums for the business of the association are
 9 not excessive.

10 (5) The commissioner~~[executive director]~~ shall examine the business of the association
 11 as often as he or she deems appropriate to assure that the group retrospective rating
 12 plan is being operated in a manner consistent with this section. If the
 13 commissioner~~[he]~~ finds that it is not being so operated, he or she shall issue an
 14 order to the association, specifying in what respects its operation is deficient and
 15 stating what corrective action shall be taken.

16 (6) The association shall certify to the commissioner~~[executive director]~~ the estimated
 17 amount of any deficit remaining after the stabilization reserve fund has been
 18 exhausted in payment of the maximum final premium for all policyholders of the
 19 association. Within sixty (60) days after such certification, the
 20 commissioner~~[executive director]~~ shall authorize the members of the association to
 21 commence recoupment of their respective shares of the deficit by applying a
 22 surcharge to be determined by the association at a rate not to exceed two percent
 23 (2%) of the annual premiums on future policies affording those kinds of insurance
 24 which form the basis for their participation in the association under procedures
 25 established by the association. The association shall amend the amount of its
 26 certification of deficit to the commissioner~~[executive director]~~ as the values of its
 27 incurred losses become finalized, and the members of the association shall amend

1 their recoupment procedure accordingly.

- 2 (7) In the event that sufficient funds are not available for the sound financial operation
3 of the association, pending recoupment as provided in subsection (6) of this section,
4 all members shall, on a temporary basis, contribute to the financial requirements of
5 the association in the manner provided for in KRS 304.41-080. Any such
6 contribution shall be reimbursed to the members by recoupment as provided in
7 subsection (6) of this section.

8 ➔Section 1552. KRS 304.41-060 is amended to read as follows:

- 9 (1) There is hereby created a stabilization reserve fund which shall be administered by
10 three (3) directors, one (1) of whom shall be the commissioner~~[executive director]~~
11 or the commissioner's~~[his]~~ deputy. The remaining two (2) directors shall be
12 appointed by the commissioner~~[executive director]~~. One (1) shall be a
13 representative of the association; the other a representative of its policyholders. The
14 directors shall serve without salary, but shall be reimbursed for actual and necessary
15 expenses incurred in the performance of their duties when approved by the
16 commissioner~~[executive director]~~.

- 17 (2) Each policyholder shall pay to the association a stabilization reserve fund charge
18 equal to one-third (1/3) of each premium payment due for insurance through the
19 association. Such charge shall be separately stated in the policy. The association
20 shall cancel the policy of any policyholder who fails to pay the stabilization reserve
21 fund charge.

- 22 (3) The association shall promptly pay to the trustee of the fund all stabilization reserve
23 fund charges which it collects from its policyholders and any retrospective premium
24 refunds payable under the group retrospective rating plan authorized by KRS
25 304.41-050(4).

- 26 (4) All moneys received by the fund shall be held in trust by a corporate trustee selected
27 by the directors. The trustee may invest the trust fund, subject to the approval of the

1 directors. All investment income shall be credited to the fund. All expenses of
 2 administration of the fund shall be charged against the fund. The trust fund shall be
 3 used solely for the purpose of discharging when due any retrospective premium
 4 charges payable by policyholders of the association under the group retrospective
 5 rating plan authorized by KRS 304.41-050(4). Payment of retrospective premium
 6 charges shall be made by the directors upon certification to them by the association
 7 of the amount due. If the trust fund is finally exhausted in payment of retrospective
 8 premium charges, all liability and obligations of the association's policyholders with
 9 respect to the payment of retrospective premium charges shall thereupon terminate
 10 and shall be conclusively presumed to have been discharged. Any moneys
 11 remaining in the fund after all such retrospective premium charges have been paid
 12 shall be returned to policyholders under procedures authorized by the directors.

13 ➔Section 1553. KRS 304.41-080 is amended to read as follows:

14 All insurers which are members of the association shall participate in its writings,
 15 expenses, servicing, allowance, management fees, and losses in the proportion that the net
 16 direct premiums of each such member, excluding that portion of premiums attributable to
 17 the operation of the association, written during the preceding calendar year, bears to the
 18 aggregate net direct premiums written in this state by all members of the association.
 19 Each insurer's participation in the association shall be determined annually on the basis of
 20 such net direct premiums written during the preceding calendar year, as reported in the
 21 annual statements and other reports filed by the insurer with the commissioner~~executive~~
 22 ~~director~~].

23 ➔Section 1554. KRS 304.41-090 is amended to read as follows:

24 The association shall be governed by a board of thirteen (13) directors. Five (5) directors
 25 shall be elected by the insurance companies which are members of the association, at a
 26 meeting of the member companies at a time and place designated by the
 27 commissioner~~executive director~~], by cumulative voting of the member companies,

1 whose vote shall be weighted in accordance with each member's net direct premiums
 2 written during the preceding calendar year. One (1) of these five (5) directors shall be
 3 from a member company domiciled in Kentucky. The commissioner~~[executive-director]~~
 4 shall appoint seven (7) directors, one (1) named by the Kentucky Medical Association;
 5 one (1) named by the Kentucky Bar Association; one (1) named by the Kentucky Hospital
 6 Association; one (1) who is a licensed resident property and casualty agent in Kentucky;
 7 and three (3) knowledgeable members of the public at large, who have no interest in any
 8 of the foregoing categories. The commissioner~~[executive-director]~~ or the
 9 commissioner's~~[his]~~ designee shall serve as a director.

10 ➔Section 1555. KRS 304.41-100 is amended to read as follows:

11 (1) Any applicant to the association, any person insured pursuant to this subtitle, or
 12 their representatives, or any affected insurer, may appeal to the
 13 commissioner~~[executive-director]~~ within thirty (30) days after any rule, action, or
 14 decision by or on behalf of the association, with respect to those items the plan of
 15 operation defines as appealable matters. Upon appeal, an administrative hearing
 16 shall be conducted in accordance with KRS Chapter 13B.

17 (2) All final orders of the commissioner~~[executive-director]~~ made pursuant to this
 18 subtitle are subject to appeal to the Franklin Circuit Court in accordance with KRS
 19 Chapter 13B.

20 ➔Section 1556. KRS 304.41-110 is amended to read as follows:

21 The association shall file in the office of the commissioner~~[executive-director]~~ annually,
 22 on or before the first day of each March, a statement containing information with respect
 23 to its transactions, condition, operations, and affairs during the preceding year. Such
 24 statement shall contain such matters and information as are prescribed and shall be in
 25 such form as is approved by the commissioner~~[executive-director]~~. The
 26 commissioner~~[executive-director]~~ may at any time require the association to furnish
 27 additional information with respect to its transactions, condition, or any matter connected

1 therewith considered to be material and of assistance in evaluating the scope, operation,
2 and experience of the association.

3 →Section 1557. KRS 304.41-120 is amended to read as follows:

4 The commissioner~~[executive director]~~ shall make an examination into the affairs of the
5 association at least annually. Such examination shall be conducted and the report thereon
6 filed in the manner prescribed in KRS Chapter 304, Subtitle 2. The expenses of such
7 examinations shall be paid by the association in the manner prescribed by that said
8 subtitle.

9 →Section 1558. KRS 304.41-130 is amended to read as follows:

10 There shall be no liability on the part of, and no cause of action of any nature shall arise
11 against the association, the commissioner~~[executive director]~~ or the commissioner's~~[his]~~
12 authorized representatives or any other person or organization, for any statements or
13 actions made in good faith by them during any proceedings or concerning any matters
14 within the scope of this subtitle.

15 →Section 1559. KRS 304.42-050 is amended to read as follows:

16 As used in this subtitle:

- 17 (1) "Account" means either of the three (3) accounts created under KRS 304.42-060.
- 18 (2) "Association" means the Kentucky Life and Health Insurance Guaranty Association
19 created under KRS 304.42-060.
- 20 (3) "Authorized assessment" or the term "authorized" when used in the context of
21 assessments means a resolution by the board of directors has been passed whereby
22 an assessment will be called immediately or in the future from member insurers for
23 a specific amount. An assessment is authorized when the resolution is passed.
- 24 (4) "Benefit plan" means a specific employee, union, or association of natural persons
25 benefit plan.
- 26 (5) "Called assessment" or the term "called" when used in the context of assessments
27 means that a notice has been issued by the association to member insurers requiring

1 that an authorized assessment be paid within the time frame set forth within the
 2 notice. An authorized assessment becomes a called assessment when notice is
 3 mailed by the association to member insurers.

4 (6) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~
 5 of the Department of Insurance of this state.

6 (7) "Contractual obligation" means any obligation under a policy or contract or a
 7 certificate under a group policy or contract, or portion thereof, for which coverage is
 8 provided under KRS 304.42-030.

9 (8) "Covered policy" means any policy or contract or portion of a policy or contract for
 10 which coverage is provided under KRS 304.42-030.

11 (9) "Extracontractual claims" include but are not limited to claims relating to bad faith
 12 in the payment of claims, punitive or exemplary damages, and attorneys' fees and
 13 costs.

14 (10) "Impaired insurer" means a member insurer which, after June 17, 1978, is not an
 15 insolvent insurer and is placed under an order of rehabilitation or conservation by a
 16 court of competent jurisdiction.

17 (11) "Insolvent insurer" means a member insurer which after June 17, 1978, is placed
 18 under an order of liquidation by a court of competent jurisdiction with a finding of
 19 insolvency.

20 (12) "Member insurer" means any insurer authorized to transact in this state any kind of
 21 insurance for which coverage is provided under KRS 304.42-030, and includes any
 22 insurer whose certificate of authority in this state may have been suspended,
 23 revoked, not renewed, or voluntarily withdrawn, but does not include:

24 (a) A nonprofit hospital, medical-surgical, dental, and health service corporation,
 25 as defined by Subtitle 32 of this chapter;

26 (b) A health maintenance organization;

27 (c) A fraternal benefit society;

- 1 (d) A mandatory state pooling plan;
- 2 (e) An assessment or cooperative insurer or any entity that operates on an
- 3 assessment basis;
- 4 (f) An insurance exchange;
- 5 (g) Any entity similar to the above;
- 6 (h) Health insurance where such insurance is written by a member of the
- 7 Kentucky Insurance Guaranty Association; or
- 8 (i) A limited health service organization.
- 9 (13) "Moody's corporate bond yield average" means the monthly average corporates as
- 10 published by Moody's Investors Service, Inc., or any successor thereto.
- 11 (14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the
- 12 person who is identified as the legal owner under the terms of the policy or contract
- 13 or who is otherwise vested with legal title to the policy or contract through a valid
- 14 assignment completed in accordance with the terms of the policy or contract and
- 15 properly recorded as the owner on the books of the insurer. The terms "owner,"
- 16 "contract owner," and "policy owner" do not include persons with a mere beneficial
- 17 interest in a policy or contract.
- 18 (15) "Premiums" means amounts or considerations, by whatever name called, received
- 19 on covered policies or contracts less returned premiums, considerations, and
- 20 deposits, and less dividends and experience credits. "Premiums" does not include
- 21 amounts or considerations received for any policies or contracts or for the portions
- 22 of policies or contracts for which coverage is not provided under KRS 304.42-
- 23 030(2), except that assessable premium shall not be reduced on account of KRS
- 24 304.42-030(2)(b)3. Relative to interest limitations and KRS 304.42-030(3)(b)
- 25 relating to limitations with respect to one (1) individual and one (1) contract owner.
- 26 "Premiums" shall not include with respect to multiple nongroup policies of life
- 27 insurance owned by one (1) owner, whether the policy owner is an individual, firm,

1 corporation, or other person, and whether the persons insured are officers,
 2 managers, employees, or other persons, premiums in excess of one million dollars
 3 (\$1,000,000) with respect to these policies or contracts, regardless of the number of
 4 policies or contracts held by the owner.

5 (16) "Person" means any individual, corporation, limited liability company, partnership,
 6 association, governmental body or entity, or voluntary organization.

7 (17) "Plan sponsor" means:

8 (a) The employer in the case of a benefit plan established or maintained by a
 9 single employer;

10 (b) The employee organization in the case of a benefit plan established or
 11 maintained by an employee organization; or

12 (c) In a case of a benefit plan established or maintained by two (2) or more
 13 employers or jointly by one (1) or more employers and one (1) or more
 14 employee organizations, the association, committee, joint board of trustees, or
 15 other similar group of representatives of the parties who establish or maintain
 16 the benefit plan.

17 (18) (a) "Principal place of business" of a plan sponsor or a person other than a natural
 18 person means the single state in which the natural persons who establish
 19 policy for the direction, control, and coordination of the operations of the
 20 entity as a whole primarily exercise the function, determined by the
 21 association in its reasonable judgment by considering the following factors:

- 22 1. The state in which the primary executive and administrative
 23 headquarters of the entity is located;
- 24 2. The state in which the principal office of the chief executive officer of
 25 the entity is located;
- 26 3. The state in which the board of directors or similar governing person or
 27 persons of the entity conducts the majority of its meetings;

- 1 4. The state in which the executive or management committee of the board
- 2 of directors or similar governing person or persons of the entity conducts
- 3 the majority of its meetings;
- 4 5. The state from which the management of the overall operations of the
- 5 entity is directed; and
- 6 6. In the case of a benefit plan sponsored by affiliated companies
- 7 comprising a consolidated corporation, the state in which the holding
- 8 company or controlling affiliate has its principal place of business as
- 9 determined using the above factors.

10 However, in the case of a plan sponsor, if more than fifty percent (50%) of the

11 participants in the benefit plan are employed in a single state, that state shall

12 be deemed to be the principal place of business of the plan sponsor.

- 13 (b) The principal place of business of a plan sponsor of a benefit plan described in
- 14 subsection (17)(c) of this section shall be deemed to be the principal place of
- 15 business of the association, committee, joint board of trustees, or other similar
- 16 group of representatives of the parties who establish or maintain the benefit
- 17 plan that, in lieu of a specific or clear designation of a principal place of
- 18 business, shall be deemed to be the principal place of business of the employer
- 19 or employee organization that has the largest investment in the benefit plan or
- 20 question.

21 (19) "Receivership court" means the court in the insolvent or impaired insurer's state

22 having jurisdiction over the conservation, rehabilitation, or liquidation of the

23 insurer.

24 (20) "Resident" means any person to whom a contractual obligation is owed and who

25 resides in this state on the date when a member insurer is determined to be an

26 impaired or insolvent insurer, whichever occurs first. A person may be a resident of

27 only one (1) state, which in the case of a person other than a natural person shall be

its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this subtitle shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

(21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(24) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

➔Section 1560. KRS 304.42-060 is amended to read as follows:

(1) There is created a nonprofit legal entity to be known as the Kentucky Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under KRS 304.42-100 and shall exercise its powers through a board of directors established under KRS 304.42-070. For purposes of administration and assessment, the association shall maintain three (3) accounts:

- (a) The health insurance account;
- (b) The life insurance account; and
- (c) The annuity account.

1 (2) The association shall come under the immediate supervision of the
 2 commissioner~~[executive-director]~~ and shall be subject to the applicable provisions
 3 of the insurance laws of this state.

4 ➔Section 1561. KRS 304.42-070 is amended to read as follows:

5 (1) The board of directors of the association shall consist of not less than five (5) nor
 6 more than nine (9) member insurers serving terms as established in the plan of
 7 operation. The members of the board shall be selected by member insurers subject
 8 to the approval of the commissioner~~[executive-director]~~. Vacancies on the board
 9 shall be filled for the remaining period of the term by a majority vote of the
 10 remaining board members, subject to the approval of the commissioner~~[executive~~
 11 ~~director]~~. To select the initial board of directors, and initially organize the
 12 association, the commissioner~~[executive-director]~~ shall give notice to all member
 13 insurers of the time and place of the organizational meeting. In determining voting
 14 rights at the organizational meeting each member insurer shall be entitled to one (1)
 15 vote in person or by proxy. If the board of directors is not selected within sixty (60)
 16 days after notice of the organizational meeting, the commissioner~~[executive~~
 17 ~~director]~~ may appoint the initial members.

18 (2) In approving selections or in appointing members to the board, the
 19 commissioner~~[executive-director]~~ shall consider, among other things, whether all
 20 member insurers are fairly represented.

21 (3) Members of the board may be reimbursed from the assets of the association for
 22 expenses incurred by them as members of the board of directors but members of the
 23 board shall not otherwise be compensated by the association for their services.

24 ➔Section 1562. KRS 304.42-080 is amended to read as follows:

25 (1) If a member insurer is an impaired insurer, the association may, in its discretion,
 26 and subject to any conditions imposed by the association that do not impair the
 27 contractual obligations of the impaired insurer and that are approved by the

1 **commissioner**~~[executive director]~~:

2 (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or
3 reinsured, any or all of the policies or contracts of the impaired insurer; or

4 (b) Provide such monies, pledges, loans, notes, guarantees, or other means as are
5 proper to effectuate paragraph (a) of this subsection and assure payment of the
6 contractual obligations of the impaired insurer pending action under paragraph
7 (a) of this subsection.

8 (2) If a member insurer is an insolvent insurer, the association shall, in its discretion,
9 either:

10 (a) 1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or
11 reinsured, the policies or contracts of the insolvent insurer; or

12 2. Assure payment of the contractual obligations of the insolvent insurer;
13 and

14 3. Provide such monies, pledges, loans, notes, guarantees, or other means
15 as are reasonably necessary to discharge such duties; or

16 (b) Provide benefits and coverages in accordance the following provisions:

17 1. With respect to life and health insurance policies and annuities, assure
18 payment of benefits for premiums identical to the premiums and benefits
19 (except for terms of conversion and renewability) that would have been
20 payable under policies or contracts of the insolvent insurer, for claims
21 incurred:

22 a. With respect to group policies and contracts, not later than the
23 earlier of the next renewal date under such policies or contracts or
24 forty-five (45) days, but in no event less than thirty (30) days, after
25 the date on which the association becomes obligated with respect
26 to such policies or contracts;

27 b. With respect to nongroup policies, contracts, and annuities not

1 later than the earlier of the next renewal date (if any) under such
2 policies or contracts or one (1) year, but in no event less than thirty
3 (30) days, from the date on which the association becomes
4 obligated with respect to such policies or contracts;

5 2. Make diligent efforts to provide all known insureds or annuitants for
6 nongroup policies and contracts, or group policy owners with respect to
7 group policies and contracts thirty (30) days' notice of the termination
8 under subparagraph 1. of this paragraph of the benefits provided;

9 3. With respect to individual health and life insurance policies, and
10 annuities covered by the association, make available to each known
11 insured or annuitant, or owner if other than the insured or annuitant, and
12 with respect to an individual formerly insured or formerly and annuitant
13 under a group policy who is not eligible for replacement group coverage,
14 make available substitute coverage on an individual basis in accordance
15 with the provisions of subparagraph 4. of this paragraph, if the insureds
16 or annuitants had a right under law or the terminated policy to convert
17 coverage to individual coverage or to continue an individual policy or
18 annuity in force until a specified age or for a specified time, during
19 which the insurer had no right unilaterally to make changes in any
20 provision of the policy or had a right only to make changes in premium
21 by class;

22 4. a. In providing substitute coverage required under subparagraph 3. of
23 this paragraph the association may offer either to reissue the
24 terminated coverage or to issue an alternative policy.

25 b. Alternative or reissued policies shall be offered without requiring
26 evidence of insurability, and shall not provide for any waiting
27 period or exclusion that would not have applied under the

- 1 terminated policy.
- 2 c. The association may reinsure any alternative or reissued policy.
- 3 5. a. Alternative policies adopted by the association shall be subject to
- 4 approval by the domiciliary insurance commissioner or
- 5 receivership court. The association may adopt alternative policies
- 6 of various types for future issuance without regard to any particular
- 7 impairment or insolvency.
- 8 b. Alternative policies shall contain at least the minimum statutory
- 9 provisions required in this state and provide benefits that shall not
- 10 be unreasonable in relation to the premium charged. The
- 11 association shall set the premium in accordance with a table of
- 12 rates which it shall adopt. The premium shall reflect the amount of
- 13 insurance to be provided and the age and class of risk of each
- 14 insured, but shall not reflect any changes in the health of the
- 15 insured after the original policy was last underwritten.
- 16 c. Any alternative policy issued by the association shall provide
- 17 coverage of a type similar to that of the policy issued by the
- 18 impaired or insolvent insurer, as determined by the association.
- 19 6. If the association elects to reissue terminated coverage at a premium rate
- 20 different from that charged under the terminated policy, the premium
- 21 shall be set by the association in accordance with the amount of
- 22 insurance provided and the age and class of risk, subject to approval by
- 23 the domiciliary insurance commissioner or by the receivership court;
- 24 7. The association's obligations with respect to coverage under any policy
- 25 of the impaired or insolvent insurer or under any reissued or alternative
- 26 policy shall cease on the date such coverage or policy is replaced by
- 27 another similar policy by the policy owner, the insured, or the

1 association;

2 (3) When proceeding under subsection (2)(b) of this section with respect to any policy
3 or contract carrying guaranteed minimum interest rates, the association shall assure
4 the payment or crediting of a rate of interest consistent with KRS 304.42-
5 030(2)(b)3.

6 (4) Nonpayment of premiums within thirty-one (31) days after the date required under
7 the terms of any guaranteed, assumed, alternative, or reissued policy or contract for
8 substitute coverage shall terminate the association's obligations under such policy or
9 coverage under this subtitle with respect to such policy or coverage, except with
10 respect to any claims incurred or any net cash surrender value which may be due in
11 accordance with the provisions of this subtitle.

12 (5) Premiums due for coverage after entry of an order of liquidation of an insolvent
13 insurer shall belong to and be payable at the direction of the association, and the
14 association shall be liable for unearned premiums due to policy or contract owners
15 arising after the entry of such order.

16 (6) The protection provided by this subtitle shall not apply where any guaranteed
17 protection is provided to residents of this state by the laws of the domiciliary state
18 or jurisdiction of the impaired or insolvent insurer other than this state.

19 (7) In carrying out its duties under subsection (2) of this section, the association may:

20 (a) Subject to approval by a court in this state, impose permanent policy or
21 contract liens in connection with any guarantee, assumption, or reinsurance
22 agreement, if the association finds that the amounts which can be assessed
23 under this subtitle are less than the amounts needed to assure full and prompt
24 performance of the association's duties under this subtitle, or that the
25 economic or financial conditions as they affect member insurers are
26 sufficiently adverse to render the imposition of such permanent policy or
27 contract liens to be in the public interest; and

1 (b) Subject to approval by a court in this state, impose temporary moratoriums or
 2 liens on payments of cash values and policy loans, or any other right to
 3 withdraw funds held in conjunction with policies or contracts, in addition to
 4 any contractual provisions for deferral of cash or policy loan value. In
 5 addition, in the event of a temporary moratorium or moratorium charge
 6 imposed by the receivership court on payment of cash values or policy loans,
 7 or on any other right to withdraw funds held in conjunction with policies or
 8 contracts, out of the assets of the impaired or insolvent insurer, the association
 9 may defer the payment of cash values, policy loans, or other rights by the
 10 association for the period of the moratorium or moratorium charge imposed by
 11 the receivership court, except for claims covered by the association to be paid
 12 in accordance with a hardship procedure established by the liquidator or
 13 rehabilitator and approved by the receivership court.

14 (8) A deposit in this state, held under law or required by the commissioner~~executive~~
 15 ~~director~~ for the benefit of creditors, including policy owners, not turned over to the
 16 domiciliary liquidator upon the entry of a final order of liquidation or order
 17 approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal
 18 state, shall be promptly paid to the association. The association:

19 (a) Shall be entitled to retain a portion of any amount so paid to it equal to the
 20 percentage determined by dividing the aggregate amount of policy owners'
 21 claims related to that insolvency for which the association has provided
 22 statutory benefits by the aggregate amount of all policy owners' claims in this
 23 state related to that insolvency; and

24 (b) Shall remit to the domiciliary receiver the amount so paid to the association
 25 and retained in accordance with paragraph (a) of this subsection. Any amount
 26 so paid to the association less the amount retained by it in accordance with
 27 paragraph (a) of this subsection shall be treated as a distribution of estate

1 assets under KRS 304.33-440 or similar provision of the state of domicile of
2 the impaired or insolvent insurer.

3 (9) If the association fails to act within a reasonable period of time with respect to an
4 insolvent insurer as provided in subsection (2) of this section, the
5 commissioner~~[executive director]~~ shall have the powers and duties of the
6 association under this subtitle with respect to the insolvent insurer.

7 (10) The association may render assistance and advice to the commissioner~~[executive~~
8 ~~director]~~, upon his or her request, concerning rehabilitation, payment of claims,
9 continuance of coverage, or the performance of other contractual obligations of any
10 impaired or insolvent insurer.

11 (11) The association shall have standing to appear or intervene before any court or
12 agency in this state with jurisdiction over an impaired or insolvent insurer
13 concerning which the association is or may become obligated under this subtitle or
14 with jurisdiction over any person or property against whom the association may
15 have rights through subrogation or otherwise. Such standing shall extend to all
16 matters germane to the powers and duties of the association, including, but not
17 limited to, proposals for reinsuring, modifying, or guaranteeing the policies or
18 contracts of the impaired or insolvent insurer and the determination of the policies
19 or contracts and contractual obligations. The association shall also have the right to
20 appear or intervene before a court or agency in another state with jurisdiction over
21 an impaired or insolvent insurer for which the association is or may become
22 obligated or with jurisdiction over any person or property against whom the
23 association may have rights through subrogation or otherwise.

24 (12) (a) Any person receiving benefits under this subtitle shall be deemed to have
25 assigned the rights under, and any causes of action against any person for
26 losses arising under, resulting from, or otherwise relating to, the covered
27 policy or contract to the association to the extent the benefits received because

1 of this subtitle, whether benefits are payments of or on account of contractual
2 obligations, continuation of coverage, or provision of substitute or alternative
3 coverages. The association may require an assignment to it of such rights and
4 cause of action by any payee, policy or contract owner, beneficiary, insured, or
5 annuitant as a condition precedent to the receipt of any right or benefits
6 conferred by this subtitle upon such person.

7 (b) The subrogation rights of the association under this subsection shall have the
8 same priority against the assets of the impaired or insolvent insurer as that
9 possessed by the person entitled to receive benefits under this subtitle.

10 (c) In addition to paragraphs (a) and (b) of this subsection, the association shall
11 have all common law rights of subrogation and any other equitable or legal
12 remedy that would have been available to the impaired or insolvent insurer or
13 owner, beneficiary, or payee of a policy or contract with respect to such policy
14 or contract, including without limitation, in the case of a structured settlement
15 annuity, any rights of the owner, beneficiary, or payee of the annuity, to the
16 extent of benefits received under this subtitle against a person originally or by
17 succession responsible for the losses arising from the personal injury relating
18 to the annuity or payment therefor.

19 (d) If the preceding provisions of this subsection are invalid or ineffective with
20 respect to any person or claim for any reason, the amount payable by the
21 association with respect to the related covered obligations shall be reduced by
22 the amount realized by any other person with respect to the person or claim
23 that is attributable to the policies or portion thereof covered by the association.

24 (e) If the association has provided benefits with respect to a covered obligation
25 and a person recovers amounts as to which the association has rights as
26 described in the preceding paragraphs of this subsection, the person shall pay
27 to the association the portion of the recovery attributable to the policies or

1 portion thereof covered by the association.

2 (13) In addition to the rights and powers elsewhere in this subtitle, the association may:

3 (a) Enter into such contracts as are necessary or proper to carry out the provisions
4 and purposes of this subtitle;

5 (b) Sue or be sued, including taking any legal actions necessary or proper to
6 recover any unpaid assessments under KRS 304.42-090 and to settle claims or
7 potential claims against it;

8 (c) Borrow money to effect the purposes of this subtitle; any notes or other
9 evidence of indebtedness of the association not in default shall be legal
10 investments for domestic insurers and may be carried as admitted assets;

11 (d) Employ or retain such persons as are necessary or appropriate to handle the
12 financial transactions of the association, and to perform such other functions
13 as may become necessary or proper under this subtitle;

14 (e) Take such legal action as may be necessary or appropriate to avoid or recover
15 payment of improper claims;

16 (f) Exercise, for the purposes of this subtitle and to the extent approved by the
17 commissioner~~executive director~~, the powers of a domestic life or health
18 insurer, but in no case may the association issue insurance policies or annuity
19 contracts other than those issued to perform its obligations under this subtitle;

20 (g) Organize itself as a corporation or in other legal form permitted by the laws of
21 the state;

22 (h) Request information from a person seeking coverage from the association in
23 order to aid the association in determining its obligations under this subtitle
24 with respect to the person, and the person shall promptly comply with the
25 request; and

26 (i) Take other necessary or appropriate action to discharge its duties and
27 obligations under this subtitle or to exercise its powers under this subtitle.

1 (14) The association may join an organization of one (1) or more other state associations
2 of similar purposes, to further the purposes and administer the powers and duties of
3 the association.

4 (15) (a) At any time within one (1) year after the date on which the association
5 becomes responsible for the obligations of a member insurer, the association
6 may elect to succeed to the rights and obligations of the member insurer that
7 accrue on or after that date and that relate to contracts covered in whole or in
8 part by the association, under any one (1) or more indemnity reinsurance
9 agreements entered into by the member insurer as a ceding insurer and
10 selected by the association. The association may not exercise any such
11 election with respect to a reinsurance agreement if the receiver, rehabilitator,
12 or liquidator of the member insurer has previously and expressly disaffirmed
13 the reinsurance agreement. The election shall be effected by a notice to the
14 receiver, rehabilitator, or liquidator and to the affected reinsurer. If the
15 association makes an election, subparagraphs 1. to 4. of this paragraph shall
16 apply with respect to the agreements selected by the association:

17 1. The association shall be responsible for all unpaid premiums due under
18 the agreements for periods both before and after the date, and shall be
19 responsible for the performance of all other obligations to be performed
20 after the coverage date, in each case which relate to contracts covered, in
21 whole or in part, by the association. The association may charge
22 contracts covered in part by the association, through reasonable
23 allocation methods, the costs for reinsurance in excess of the obligations
24 of the association.

25 2. The association shall be entitled to any amounts payable by the reinsurer
26 under the agreements with respect to losses or events that occur in
27 periods after the coverage date and that relate to contracts covered by the

1 association, in whole or in part. Upon receipt of any such amounts the
2 association shall be obliged to pay to the beneficiary under the policy or
3 contract on account of which the amounts were paid a portion of the
4 amount equal to the excess of:

- 5 a. The amount received by the association, over
- 6 b. The benefits paid by the association on account of the policy or
7 contract less the retention of the impaired or insolvent member
8 insurer applicable to the loss or event.

9 3. Within thirty (30) days following the association's election, the
10 association and each indemnity reinsurer shall calculate the net balance
11 due to or from the association under each such reinsurance agreement as
12 of the date of the association's election, which calculation shall give full
13 credit to all items paid by either the member insurer or its receiver,
14 rehabilitator, or liquidator, or the indemnity reinsurer during the period
15 between the coverage date and the date of the association's election.
16 Either the association or indemnity reinsurer shall pay the net balance
17 due the other within five (5) days of the completion of the calculation. If
18 the receiver, rehabilitator, or liquidator has received any amounts due
19 the association under subparagraph 2. of this paragraph, the receiver,
20 rehabilitator, or liquidator shall remit those amounts to the association as
21 promptly as practicable.

22 4. If the association, within sixty (60) days of the election, pays the
23 premiums due for periods both before and after the coverage date that
24 relate to contracts covered by the association in whole or in part, the
25 insurer shall not be entitled to terminate the reinsurance agreements
26 insofar as the agreements relate to contracts covered by the association
27 in whole or in part and shall not be entitled to set off any unpaid

1 premium due for periods prior to the coverage date against amounts due
2 the association.

3 (b) If the association transfers its obligations to another insurer, and if the
4 association and the other insurer agree, the other insurer shall succeed to the
5 rights and obligations of the association under paragraph (a) of this subsection
6 effective as of the date agreed upon by the association and the other insurer
7 and regardless of whether the association has made the election referred to in
8 paragraph (a) of this subsection if:

- 9 1. The indemnity reinsurance agreements automatically terminate for new
10 reinsurance unless the indemnity reinsurer and the other insurer agree to
11 the contrary;
- 12 2. The obligations described in subparagraph 2. of paragraph (a) of this
13 subsection no longer apply on and after the date the indemnity
14 reinsurance agreement is transferred to the third party insurer; and
- 15 3. The association has not previously expressly determined in writing that
16 it will not exercise the election referred to in paragraph (a) of this
17 subsection.

18 (c) The provisions of this subsection shall supersede the provisions of any law of
19 this state or of any affected reinsurance agreements that provide for or require
20 any payment of reinsurance proceeds, on account of losses or events that occur
21 in periods after the coverage date, to the receiver, liquidator, or rehabilitator of
22 the insolvent member insurer. The receiver, rehabilitator, or liquidator shall
23 remain entitled to any amounts payable by the reinsurer under the reinsurance
24 agreements with respect to losses or events that occur in periods prior to the
25 coverage date, subject to applicable setoff provisions.

26 (d) Except as otherwise expressly provided in this subsection, nothing in this
27 subsection shall alter or modify the terms and conditions of the indemnity

1 reinsurance agreements of the insolvent member insurer. Nothing in this
 2 subsection shall abrogate or limit any rights of any reinsurer to claim that it is
 3 entitled to rescind a reinsurance agreement. Nothing in this subsection shall
 4 give a policy owner or beneficiary an independent cause of action against an
 5 indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance
 6 agreement.

7 (16) The board of directors of the association shall have discretion and may exercise
 8 reasonable business judgment to determine the means by which the association is to
 9 provide the benefits of this subtitle in an economical and efficient manner.

10 (17) If the association has arranged or offered to provide the benefits of this subtitle to a
 11 covered person under a plan or arrangement that fulfills the association's obligations
 12 under this subtitle, the person shall not be entitled to benefits from the association
 13 in addition to or other than those provided under the plan or arrangement.

14 (18) Venue in a suit against the association under this subtitle shall be in Franklin
 15 County. The association shall not be required to give an appeal bond in an appeal
 16 that relates to a cause of action arising under this subtitle.

17 ➔Section 1563. KRS 304.42-090 is amended to read as follows:

18 (1) For the purpose of providing the funds necessary to carry out the powers and duties
 19 of the association, the board of directors shall assess the member insurers,
 20 separately for each account, at such time and for such amounts as the board finds
 21 necessary. Assessments shall be due not less than thirty (30) days after prior written
 22 notice to the member insurers and shall accrue interest at eight percent (8%) per
 23 annum on and after the due date.

24 (2) There shall be two (2) classes of assessments:

25 (a) Class A assessments shall be made for the purpose of meeting administrative
 26 and legal costs and other expenses. Class A assessments may be authorized
 27 and called whether or not related to a particular impaired or insolvent insurer;

1 (b) Class B assessments shall be authorized and called to the extent necessary to
2 carry out the powers and duties of the association under KRS 304.42-080 with
3 regard to an impaired or insolvent insurer.

4 (3) (a) The amount of any Class A assessment shall be determined by the board and
5 may be authorized and called on a pro rata or non-pro rata basis. If pro rata,
6 the board may provide that it be credited against future Class B assessments.
7 The total of all non-pro rata assessments shall not exceed one hundred fifty
8 dollars (\$150) per member insurer in any one (1) calendar year. The amount of
9 any Class B assessment shall be allocated for assessment purposes among the
10 accounts pursuant to an allocation formula which may be based on the
11 premiums or reserves of the impaired or insolvent insurer or any other
12 standard deemed by the board in its sole discretion as being fair and
13 reasonable under the circumstances.

14 (b) Class B assessments against member insurers for each account shall be in the
15 proportion that the premiums received on business in this state by each
16 assessed member insurer on policies or contracts covered by each account for
17 the three (3) most recent calendar years for which information is available
18 preceding the year in which the insurer became insolvent, or in the case of
19 assessment with respect to an impaired insurer, the three (3) most recent
20 calendar years for which information is available preceding the year in which
21 the insurer became impaired, bears to such premiums received on business in
22 this state for such calendar years by all assessed member insurers.

23 (c) Assessments for funds to meet the requirements of the association with
24 respect to an impaired or insolvent insurer shall not be made until necessary to
25 implement the purposes of this subtitle. Classification of assessments under
26 subsection (2) of this section and computation of assessments under this
27 subsection shall be made with a reasonable degree of accuracy, recognizing

1 that exact determinations may not always be possible. The association shall
2 notify each member insurer of its anticipated pro rata share of an authorized
3 assessment not yet called within one hundred eighty (180) days after the
4 assessment is authorized.

5 (4) The association may abate or defer, in whole or in part, the assessment of a member
6 insurer if, in the opinion of the board, payment of the assessment would endanger
7 the ability of the member insurer to fulfill its contractual obligations. In the event an
8 assessment against a member insurer is abated, or deferred in whole or in part, the
9 amount by which such assessment is abated or deferred may be assessed against the
10 other member insurers in a manner consistent with the basis for assessments set
11 forth in this section. Once the conditions that caused a deferral have been removed
12 or rectified, the member shall pay all assessments that were deferred under a
13 repayment plan approved by the association.

14 (5) (a) Subject to the provisions of paragraph (b) of this subsection, the total of all
15 assessments authorized by the association with respect to a member insurer
16 for each account shall not in any one (1) calendar year exceed two percent
17 (2%) of the insurer's average annual premiums received in this state on the
18 policies and contracts covered by the account during the three (3) calendar
19 years preceding the year in which the insurer became an impaired or insolvent
20 insurer. If the maximum assessment, together with the other assets of the
21 association in any other account, does not provide in any one (1) year in any
22 other account an amount sufficient to carry out the responsibilities of the
23 association, the necessary additional funds shall be assessed as soon thereafter
24 as permitted by this subtitle.

25 (b) If two (2) or more assessments are authorized in one (1) calendar year with
26 respect to insurers that become impaired or insolvent in different calendar
27 years, the average annual premiums for purposes of the aggregate assessment

1 percentage limitation referenced in paragraph (a) of this subsection shall be
 2 equal and limited to the higher of the three (3) year average annual premiums
 3 for the applicable account as calculated under this section.

4 (c) The board may provide in the plan of operation a method of allocating funds
 5 among claims, whether relating to one (1) or more impaired or insolvent
 6 insurers, when the maximum assessment will be insufficient to cover
 7 anticipated claims.

8 (6) The board may, by an equitable method as established in the plan of operation,
 9 refund to member insurers, in proportion to the contribution of each insurer to that
 10 account, the amount by which the assets of the account exceed the amount the board
 11 finds is necessary to carry out during the coming year the obligations of the
 12 association with regard to that account, including assets accruing from assignment,
 13 subrogation, net realized gains and income from investments. A reasonable amount
 14 may be retained in any account to provide funds for the continuing expenses of the
 15 association and for future losses claims.

16 (7) It shall be proper for any member insurer, in determining its premium rates and
 17 policy owner dividends as to any kind of insurance within the scope of this subtitle,
 18 to consider the amount reasonably necessary to meet its assessment obligations
 19 under this subtitle.

20 (8) The association shall issue to each insurer paying an assessment under this subtitle,
 21 other than a Class A assessment, a certificate of contribution, in a form prescribed
 22 by the commissioner~~executive director~~, for the amount of the assessment so paid.
 23 All outstanding certificates shall be of equal dignity and priority without reference
 24 to amounts or dates of issue. A certificate of contribution may be shown by the
 25 insurer in its financial statement as an asset in such form and for such amount, if
 26 any, and period of time as the commissioner~~executive director~~ may approve.

27 (9) (a) A member insurer that wishes to protest all or part of an assessment shall pay

when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(b) Within sixty (60) days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty (30) days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of notice of the final decision, the protesting member insurer may appeal the final action to the commissioner~~executive director~~, in accordance with KRS 304.42-110(3).

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner~~executive director~~ for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

➔Section 1564. KRS 304.42-100 is amended to read as follows:

- 1 (1) (a) The association shall submit to the commissioner~~[executive director]~~ a plan
 2 of operation and any amendments thereto necessary or suitable to assure the
 3 fair, reasonable, and equitable administration of the association. The plan of
 4 operation and any amendments thereto shall become effective upon approval
 5 in writing by the commissioner~~[executive director]~~;
- 6 (b) If the association fails to submit a suitable plan of operation within one
 7 hundred eighty (180) days following June 17, 1978, or if at any time thereafter
 8 the association fails to submit suitable amendments to the plan, the
 9 commissioner~~[executive director]~~ shall, after notice and hearing, adopt and
 10 promulgate such reasonable rules as are necessary or advisable to effectuate
 11 the provisions of this subtitle. Such rules shall continue in force until modified
 12 by the commissioner~~[executive director]~~ or superseded by a plan submitted by
 13 the association and approved by the commissioner~~[executive director]~~.
- 14 (2) All member insurers shall comply with the plan of operation.
- 15 (3) The plan of operation shall, in addition to requirements enumerated elsewhere in
 16 this subtitle:
- 17 (a) Establish procedures for handling the assets of the association;
- 18 (b) Establish the amount and method of reimbursing members of the board of
 19 directors under KRS 304.42-070;
- 20 (c) Establish regular places and times for meetings of the board of directors;
- 21 (d) Establish procedures for records to be kept of all financial transactions of the
 22 association, its agents, and the board of directors;
- 23 (e) Establish the procedures whereby selections for the board of directors will be
 24 made and submitted to the commissioner~~[executive director]~~;
- 25 (f) Establish any additional procedures for assessments under KRS 304.42-090;
- 26 (g) Contain additional provisions necessary or proper for the execution of the
 27 powers and duties of the association.

1 (4) The plan of operation may provide that any or all powers and duties of the
 2 association, except those under paragraph (c) of subsection (10) of KRS 304.42-080
 3 and 304.42-090, are delegated to a corporation, association, or other organization
 4 which performs or will perform functions similar to those of this association, or its
 5 equivalent, in two (2) or more states. Such a corporation, association, or
 6 organization shall be reimbursed for any payments made on behalf of the
 7 association and shall be paid for its performance of any function of the association.
 8 A delegation under this subsection shall take effect only with the approval of both
 9 the board of directors and the commissioner~~executive director~~, and may be made
 10 only to a corporation, association, or organization which extends protection not
 11 substantially less favorable and effective than that provided by this subtitle.

12 ➔Section 1565. KRS 304.42-110 is amended to read as follows:

13 In addition to the duties and powers enumerated elsewhere in this subtitle:

14 (1) The commissioner~~executive director~~ shall:

- 15 (a) Upon request of the board of directors, provide the association with a
 16 statement of the premiums in the appropriate states for each member insurer;
- 17 (b) When an impairment is declared and the amount of the impairment is
 18 determined, serve a demand upon the impaired insurer to make good the
 19 impairment within a reasonable time. Notice to the impaired insurer shall
 20 constitute notice to its shareholders, if any. The failure of the insurer to
 21 promptly comply with the demand shall not excuse the association from the
 22 performance of its powers and duties under this subtitle; and
- 23 (c) In any liquidation or rehabilitation proceeding involving a domestic insurer,
 24 be appointed as the liquidator or rehabilitator. If a foreign or alien member
 25 insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or
 26 state of entry, the commissioner~~executive director~~ may be appointed
 27 conservator.

1 (2) The commissioner~~[executive director]~~ may suspend or revoke, after notice and
 2 hearing conducted in accordance with KRS Chapter 13B, the certificate of authority
 3 to transact insurance in this state of any member insurer which fails to pay an
 4 assessment when due or fails to comply with the plan of operation. As an alternative
 5 the commissioner~~[executive director]~~ may levy a forfeiture on any member insurer
 6 which fails to pay an assessment when due. A forfeiture shall not exceed five
 7 percent (5%) of the unpaid assessment per month, but no forfeiture shall be less
 8 than one hundred dollars (\$100) per month.

9 (3) Any final action of the board of directors or the association may be appealed to the
 10 commissioner~~[executive director]~~ by any member insurer if the appeal is taken
 11 within sixty (60) days of its receipt of notice of the action being appealed. Any final
 12 order of the commissioner~~[executive director]~~ shall be subject to judicial review as
 13 set forth in Subtitle 2 of this chapter and KRS Chapter 13B.

14 (4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all
 15 interested persons of the effect of this subtitle.

16 ➔Section 1566. KRS 304.42-120 is amended to read as follows:

17 To aid in the detection and prevention of insurer insolvencies or impairments:

18 (1) It shall be the duty of the commissioner~~[executive director]~~:

19 (a) To notify the commissioners of all of the other states, territories of the United
 20 States and the District of Columbia when he or she takes any of the following
 21 actions against a member insurer:

- 22 1. Revocation of license;
- 23 2. Suspension of license;
- 24 3. Makes any formal order that such company restrict its premium writing,
 25 obtain additional contributions to surplus, withdraw from the state,
 26 reinsure all or any part of its business, or increase capital, surplus, or any
 27 other account for the security of policy owners or creditors.

1 Such notice shall be mailed to all commissioners within thirty (30) days
 2 following the action taken or the date on which such action occurs;

3 (b) To report to the board of directors when he or she has taken any of the actions
 4 set forth in paragraph (a) of this subsection or has received a report from any
 5 other commissioner indicating that any such action has been taken in another
 6 state. Such report to the board of directors shall contain all significant details
 7 of the action taken or the report received from another commissioner;

8 (c) To report to the board of directors when he or she has reasonable cause to
 9 believe from any examination, whether completed or in process, of any
 10 member insurer that such insurer may be an impaired or insolvent insurer;

11 (d) To furnish to the board of directors the NAIC insurance regulatory
 12 information system information developed by the National Association of
 13 Insurance Commissioners, and the board may use the information contained
 14 therein in carrying out its duties and responsibilities under this section. Such
 15 report and the information contained therein shall be kept confidential by the
 16 board of directors until such time as made public by the
 17 commissioner~~executive director~~ or other lawful authority.

18 (2) The commissioner~~executive director~~ may seek the advice and recommendations
 19 of the board of directors concerning any matter affecting his or her duties and
 20 responsibilities regarding the financial condition of member companies and
 21 companies seeking admission to transact insurance business in this state.

22 (3) The board of directors may, upon majority vote, make reports and recommendations
 23 to the commissioner~~executive director~~ upon any matter germane to the solvency,
 24 liquidation, rehabilitation or conservation of any member insurer or germane to the
 25 solvency of any company seeking to do an insurance business in this state. Such
 26 reports and recommendations shall not be considered public documents.

27 (4) The board of directors may, upon majority vote, notify the commissioner~~executive~~

1 ~~director~~] of any information indicating any member insurer may be an impaired or
2 insolvent insurer.

- 3 (5) The board of directors may, upon majority vote, make recommendations to the
4 commissioner~~[executive director]~~ for the detection and prevention of insurer
5 insolvencies.

6 ➔Section 1567. KRS 304.42-130 is amended to read as follows:

- 7 (1) A member insurer, other than a nonprofit hospital, medical, surgical, dental, or
8 health service corporation, may offset its tax liability to this state imposed against it
9 under KRS 136.320(3) and (4), 136.330, 136.340, or 136.350, whichever may be
10 applicable, against the assessment described in subsection (8) of KRS 304.42-090 to
11 the extent of twenty percent (20%) of the amount of the assessment for each of the
12 five (5) calendar years following the year in which the assessment was paid. If a
13 member insurer should cease doing business, all uncredited assessments may be
14 credited against its tax liability for the year in which it ceases doing business.

- 15 (2) Any sums acquired by refund, pursuant to KRS 304.42-090(6), from the association
16 which have theretofore been written off by contributing insurers and offset against
17 taxes as provided in this section, and are not then needed for purposes of this
18 subtitle, shall be paid by the association to the commissioner~~[executive director]~~
19 and by the commissioner~~[him]~~ deposited with the State Treasurer for credit to the
20 general fund of this state.

21 ➔Section 1568. KRS 304.42-150 is amended to read as follows:

22 The association shall be subject to examination and regulation by the
23 commissioner~~[executive director]~~. The board of directors shall submit to the
24 commissioner~~[executive director]~~, not later than May 1 of each year, a financial report for
25 the preceding calendar year in a form approved by the commissioner~~[executive director]~~
26 and a report of its activities during the preceding calendar year. Upon the request of a
27 member insurer, the association shall provide the member insurer with a copy of the

1 report.

2 ➔Section 1569. KRS 304.42-170 is amended to read as follows:

3 There shall be no liability on the part of and no cause of action of any nature shall arise
4 against any member insurer or its agents or employees, the association or its agents or
5 employees, members of the board of directors, or the commissioner~~[executive director]~~
6 or the commissioner's~~[his]~~ representatives, for any action taken by them in the
7 performance of their powers and duties under this subtitle. Immunity shall extend to the
8 participation in any organization of one (1) or more other state associations of similar
9 purposes and to any such organization and its agents or employees.

10 ➔Section 1570. KRS 304.44-010 is amended to read as follows:

11 As used in this subtitle, unless the context requires otherwise:

- 12 (1) "Department~~[Office]~~" means the Department~~[Office]~~ of Insurance;
- 13 (2) "Mine subsidence" means the collapse of underground coal mines resulting in direct
14 damage to a structure. It does not include loss caused by earthquake, landslide,
15 water seepage, volcanic eruption, or collapse of storm, and sewer drains;
- 16 (3) "Mine subsidence insurance fund" or "fund" means the fund established by this
17 subtitle and administered as determined by the department~~[office]~~;
- 18 (4) "Policy" means a contract of insurance providing mine subsidence insurance;
- 19 (5) "Premium" means the gross rate charged policyholders for insurance provided by
20 this subtitle;
- 21 (6) "Structure" means any dwelling, building, or fixture permanently affixed to realty,
22 but does not include land, trees, plants, or crops; and
- 23 (7) "Administrator" means the organization designated by the commissioner~~[executive
24 director]~~ of the department to administer the fund.

25 ➔Section 1571. KRS 304.44-020 is amended to read as follows:

- 26 (1) There is hereby established a fund to be known as the "Mine Subsidence Insurance
27 Fund." The fund shall be operated pursuant to this subtitle. The

1 commissioner~~[executive director]~~ of the department~~[office]~~ shall determine how
 2 the fund shall be administered. In the discretion of the commissioner~~[executive~~
 3 ~~director]~~, the fund may be administered by the Reinsurance Association, established
 4 by KRS 304.35-010, or by the department~~[office]~~;

5 (2) The administrator shall make available through the fund insurance coverage against
 6 losses arising out of or due to mine subsidence within this state as to any structure
 7 within this state;

8 (3) The moneys in the fund shall be derived from premiums for subsidence insurance
 9 collected pursuant to this subtitle;

10 (4) Premiums for subsidence insurance shall be established by the administrator which
 11 shall periodically review the premium level and the experience data applicable to
 12 operation of the fund and make changes as required; and

13 (5) Premiums shall be established at a rate or within a schedule of rates sufficient to
 14 satisfy all foreseeable claims upon the fund during the period of coverage, giving
 15 due consideration to relevant loss or claim experience or trends, to cover normal
 16 costs of operation of the fund by the administrator and provide a reasonable reserve
 17 fund for unexpected contingencies. Deviation from the premium set by the
 18 administrator shall not be allowed.

19 ➔Section 1572. KRS 304.44-130 is amended to read as follows:

20 These provisions establishing the mine subsidence insurance fund shall not be
 21 implemented until federal money is received by the department~~[office]~~ for administration
 22 costs and a reserve. However, the department~~[office]~~ may take any preliminary action to
 23 prepare for implementation when federal money is received.

24 ➔Section 1573. KRS 304.45-020 is amended to read as follows:

25 As used in this subtitle:

26 (1) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~
 27 of the Kentucky Department~~[Office]~~ of Insurance or the insurance supervisor of

1 another state;

2 (2) "Completed operations liability" means liability arising out of the installation,
3 maintenance, or repair of any product at a site which is not owned or controlled by:

4 (a) Any person who performs that work; or

5 (b) Any person who hires an independent contractor to perform that work, but
6 shall include liability for activities which are completed or abandoned before
7 the date of the occurrence giving rise to the liability;

8 (3) "Domicile," for the purposes of determining the state in which a purchasing group is
9 domiciled, means:

10 (a) For a corporation, the state in which the purchasing group is incorporated; and

11 (b) For an unincorporated entity, the state of its principal place of business;

12 (4) "Hazardous financial condition" means a condition in which, based on its present or
13 reasonably anticipated financial condition, a risk retention group, although not yet
14 financially impaired or insolvent, is unlikely to be able:

15 (a) To meet obligations to policyholders with respect to known claims and
16 reasonably anticipated claims; or

17 (b) To pay other obligations in the normal course of business;

18 (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines
19 insurance, and any other arrangement for shifting and distributing risks which is
20 determined to be insurance under the laws of this state;

21 (6) "Liability":

22 (a) Means legal liability for damages (including costs of defense, legal costs and
23 fees, and other claims expenses) because of injuries to other persons, damage
24 to their property, or other damage or loss to such other persons resulting from
25 or arising out of:

26 1. Any business (whether profit or nonprofit), trade, product, services
27 (including professional services), premises, or operations; or

- 1 2. Any activity of any state or local government, or any agency or political
2 subdivision thereof; but
- 3 (b) Does not include personal risk liability or an employer's liability with respect
4 to its employees other than legal liability under the Federal Employers'
5 Liability Act (45 U.S.C. secs. 51 et seq.);
- 6 (7) "Personal risk liability" means liability for damages because of injury to any person,
7 damage to property, or other loss or damage arising from any personal, familial, or
8 household responsibilities or activities, rather than from responsibilities or activities
9 referred to in subsection (6) of this section;
- 10 (8) "Plan of operation or a feasibility study" means an analysis which presents the
11 expected activities and results of a risk retention group, including, at a minimum:
- 12 (a) Information sufficient to verify that its members are engaged in businesses or
13 activities similar or related with respect to the liability to which such members
14 are exposed by virtue of any related, similar, or common business, trade,
15 product, services, premises, or operations;
- 16 (b) For each state in which it intends to operate, the coverages, deductibles,
17 coverage limits, rates, and rating classification system for each kind of
18 insurance the group intends to offer;
- 19 (c) Historical and expected loss experience of the proposed members and national
20 experience of similar exposures to the extent that this experience is reasonably
21 available;
- 22 (d) Pro forma financial statements and projections;
- 23 (e) Appropriate opinions by a qualified, independent casualty actuary, including a
24 determination of minimum premium or participation levels required to
25 commence operations and to prevent a hazardous financial condition;
- 26 (f) Identification of management, underwriting, and claim procedures, marketing
27 methods, managerial oversight methods, and investment policies; and

1 (g) Such other matters as may be prescribed by the commissioner~~executive~~
 2 ~~director~~] for liability insurance companies authorized by the insurance laws of
 3 the state in which the risk retention group is chartered;

4 (9) "Product liability" means liability for damages because of any personal injury,
 5 death, emotional harm, consequential economic damage, or property damage
 6 (including damages resulting from the loss of use of property) arising out of the
 7 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of
 8 a product, but does not include the liability of any person for those damages if the
 9 product involved was in the possession of such person when the incident giving rise
 10 to the claim occurred;

11 (10) "Purchasing group" means any group which:

12 (a) Has as one (1) of its purposes the purchase of liability insurance on a group
 13 basis;

14 (b) Purchases such insurance only for its group members and only to cover their
 15 similar or related liability exposure, as described in paragraph (c) of this
 16 subsection;

17 (c) Is composed of members whose businesses or activities are similar or related
 18 with respect to the liability to which members are exposed by virtue of any
 19 related, similar, or common business, trade, product, services, premises, or
 20 operations; and

21 (d) Is domiciled in any state;

22 (11) "Risk retention group" means any corporation or other limited liability association:

23 (a) Whose primary activity consists of assuming and spreading all, or any portion,
 24 of the liability exposure of its group members;

25 (b) Which is organized for the primary purpose of conducting the activity
 26 described under paragraph (a) of this subsection;

27 (c) Which:

- 1 1. Is chartered and licensed as a liability insurance company and authorized
- 2 to engage in the business of insurance under the laws of any state; or
- 3 2. Before January 1, 1985, was chartered or licensed and authorized to
- 4 engage in the business of insurance under the laws of Bermuda or the
- 5 Cayman Islands and, before such date, had certified to the
- 6 commissioner~~[executive director]~~ of at least one (1) state that it satisfied
- 7 the capitalization requirements of such state, except that any such group
- 8 shall be considered to be a risk retention group only if it has engaged in
- 9 business continuously since such date and only for the purpose of
- 10 continuing to provide insurance to cover product liability or completed
- 11 operations liability (as such terms were defined under the Product
- 12 Liability Risk Retention Act of 1981 prior to the date of the enactment
- 13 of the Liability Risk Retention Act of 1986);
- 14 (d) Which does not exclude any person from membership in the group solely to
- 15 provide for members of such group a competitive advantage over such person;
- 16 (e) Which:
- 17 1. Has as its owners only persons who comprise the membership of the risk
- 18 retention group and who are provided insurance by such group; or
- 19 2. Has as its sole owner an organization which has as its members only
- 20 persons who comprise the membership of the risk retention group and as
- 21 its owners only persons who comprise the membership of the risk
- 22 retention group and who are provided insurance by such group;
- 23 (f) Whose members are engaged in businesses or activities similar or related with
- 24 respect to the liability to which such members are exposed by virtue of any
- 25 related, similar, or common business, trade, product, services, premises, or
- 26 operations; and
- 27 (g) Whose activities do not include the provision of insurance other than:

1 1. Liability insurance for assuming and spreading all or any portion of the
2 liability of its group members; and

3 2. Reinsurance with respect to the liability of any other risk retention group
4 or any members of such other group which is engaged in businesses or
5 activities so that such group or member meets the requirement described
6 in paragraph (f) of this subsection from membership in the risk retention
7 group and which provides such reinsurance; and

8 (h) The name of which includes the phrase "risk retention group;"

9 (12) "State" means any state of the United States or the District of Columbia.

10 ➔Section 1574. KRS 304.45-030 is amended to read as follows:

11 (1) A risk retention group shall, pursuant to the provisions of this chapter, be chartered
12 and licensed to write only liability insurance pursuant to this subtitle, and, except as
13 otherwise provided in this subtitle, shall comply with all of the laws, regulations,
14 and requirements applicable to such insurers chartered and licensed in this state and
15 with KRS 304.45-040 to the extent such requirements are not a limitation on laws,
16 regulations, or requirements of this state.

17 (2) Notwithstanding any other provision to the contrary, all risk retention groups
18 chartered in this state shall file with the department~~[office]~~ and the National
19 Association of Insurance Commissioners (NAIC), an annual statement in a form
20 prescribed by the NAIC and completed in accordance with the NAIC instructions
21 and the NAIC accounting practices and procedures manual.

22 (3) Before it may offer insurance in any state, each risk retention group shall also
23 submit for approval to the commissioner~~[executive-director]~~ of this state a plan of
24 operation or a feasibility study and revisions of such plan or study if the group
25 intends to offer any additional kinds of liability insurance. The group shall not offer
26 any additional kinds of liability insurance in this state or any other state until a
27 revision of such plan or study is approved by the commissioner~~[executive-director]~~.

1 (4) At the time of filing its application for charter, the risk retention group shall provide
 2 to the commissioner~~[executive director]~~ in summary form the identity of the initial
 3 members of the group, the identity of those individuals who organized the group or
 4 who will provide administrative services or otherwise influence or control the
 5 activities of the group, the amount and nature of initial capitalization, the coverages
 6 to be afforded, and the states in which the group intends to operate. Upon receipt of
 7 the information, the commissioner~~[executive director]~~ shall forward such
 8 information to the National Association of Insurance Commissioners. Providing
 9 notification to the National Association of Insurance Commissioners is in addition
 10 to and shall not be sufficient to satisfy the requirements of KRS 304.45-040 and all
 11 other sections of this subtitle.

12 (5) A risk retention group shall, within ten (10) days, notify the
 13 commissioner~~[executive director]~~ of any changes in the identity of those individuals
 14 who provide administrative services or otherwise influence or control the activities
 15 of the group, the coverages afforded, and the states in which the group operates.

16 (6) A risk retention group chartered and licensed in this state as a product liability risk
 17 retention group under the provisions of KRS Chapter 304 in effect prior to July 13,
 18 1990, may continue to act as such without complying with this subtitle as long as it
 19 complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990.
 20 The exception provided in this subsection shall cease to apply to any product
 21 liability risk retention group which offers any other kind of liability insurance other
 22 than product liability or completed operations liability insurance.

23 ➔Section 1575. KRS 304.45-040 is amended to read as follows:

24 Risk retention groups chartered and licensed in states other than this state and seeking to
 25 do business as a risk retention group in this state shall observe and abide by the laws of
 26 this state as follows:

27 (1) Before offering insurance in this state, a risk retention group shall submit to the

1 commissioner~~[executive director]~~:

2 (a) A statement identifying the state or states in which the risk retention group is
3 chartered and licensed as a liability insurance company, date of chartering and
4 licensing, its principal place of business, and such other information,
5 including information on its membership, as the commissioner~~[executive~~
6 ~~director]~~ of this state may require to verify that the risk retention group is
7 qualified under KRS 304.45-020(11);

8 (b) A copy of its plan of operations or a feasibility study and revisions of such
9 plan or study submitted to its state of domicile, but the provision relating to
10 the submission of a plan of operation or a feasibility study shall not apply as to
11 any kind or classification of liability insurance which was defined in the
12 Product Liability Risk Retention Act of 1981 before October 27, 1986, and
13 was offered before such date by any risk retention group which had been
14 chartered and operating for not less than three (3) years before such date; and

15 (c) A statement of registration which designates the Secretary of State as its agent
16 for the purpose of receiving service of legal documents or process.

17 (2) Any risk retention group doing business in this state shall submit to the
18 commissioner~~[executive director]~~:

19 (a) A copy of the group's financial statement submitted to the state in which the
20 risk retention group is chartered and licensed, which shall be certified by an
21 independent public accountant and contain a statement of opinion on loss and
22 loss adjustment expense reserves made by a member of the American
23 Academy of Actuaries or a qualified loss reserve specialist under criteria
24 established by the National Association of Insurance Commissioners;

25 (b) A copy of each financial, market conduct, or other examination of the risk
26 retention group as certified by the commissioner~~[executive director]~~ or public
27 official conducting the examination;

1 (c) Upon request by the commissioner~~[executive director]~~, a copy of any audit
2 performed with respect to the risk retention group; and

3 (d) Such information as may be required to verify its continuing qualification as a
4 risk retention group under KRS 304.45-020(11).

5 (3) A risk retention group shall, within ten (10) days, notify the
6 commissioner~~[executive director]~~ of any changes in any of the information required
7 in subsections (1) and (2).

8 (4) Any risk retention group shall submit to an examination by the
9 commissioner~~[executive director]~~ to determine its financial condition if the
10 commissioner~~[executive director]~~ of the jurisdiction in which the group is chartered
11 and licensed has not initiated an examination or does not initiate an examination
12 within sixty (60) days after a request by the commissioner~~[executive director]~~ of
13 this state. Any such examination shall be coordinated to avoid unjustified repetition
14 and conducted in an expeditious manner and in accordance with the National
15 Association of Insurance Commissioners' examiner handbook. Such examinations
16 shall be conducted in accordance with KRS 304.2-210 to 304.2-300.

17 (5) Any application used or any policy issued by a risk retention group shall contain in
18 ten (10) point boldface type the following legend:

19 NOTICE

20 THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR
21 RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE
22 INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE
23 INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT
24 AVAILABLE FOR YOUR RISK RETENTION GROUP.

25 (6) In the solicitation or sale of insurance, a risk retention group shall not:

26 (a) Solicit or sell insurance to any person who is not eligible for membership in
27 such group; and

1 (b) Solicit or sell insurance issued by, or otherwise operate, a risk retention group
2 that is in a hazardous financial condition or is financially impaired.

3 (7) No risk retention group shall be allowed to do business in this state if an insurance
4 company is directly or indirectly a member or owner of such risk retention group,
5 except if all members of the risk retention group are insurance companies.

6 (8) A risk retention group shall not offer insurance policy coverage prohibited by
7 statute or regulation or declared unlawful by the highest court of this state.

8 (9) A risk retention group not chartered in this state and doing business in this state
9 shall comply with a lawful order issued in a voluntary dissolution proceeding or in a
10 delinquency proceeding commenced by a commissioner~~[executive director]~~ if there
11 has been a finding of financial impairment after an examination under subsection
12 (4) of this section.

13 (10) A risk retention group registered in this state as a product liability risk retention
14 group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990,
15 may continue to act as such without complying with this subtitle as long as it
16 complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990.
17 The exception provided in this subsection shall cease to apply to any product
18 liability risk retention group which offers kinds of liability insurance other than
19 product liability or completed operations liability insurance.

20 ➔Section 1576. KRS 304.45-060 is amended to read as follows:

21 (1) A purchasing group which intends to do business in this state shall, prior to doing
22 business, furnish notice to the commissioner~~[executive director]~~ which shall:

23 (a) Identify the state in which the purchasing group is domiciled;

24 (b) Specify the kinds and classification of liability insurance which the purchasing
25 group intends to purchase;

26 (c) Identify the insurance company or companies from which the purchasing
27 group intends to purchase its insurance and the domicile or domiciles of such

- 1 insurance company or insurance companies;
- 2 (d) Specify the method by which and the person or persons, if any, through whom
- 3 insurance will be offered to its members whose risks are resident or located in
- 4 this state;
- 5 (e) Identify the principal place of business of the purchasing group; and
- 6 (f) Provide such other information as may be required by the
- 7 commissioner~~executive director~~ to verify that the purchasing group is
- 8 qualified under KRS 304.45-020(10) and is otherwise in compliance with the
- 9 laws of this state.
- 10 (2) A purchasing group shall, within ten (10) days, notify the commissioner~~executive~~
- 11 ~~director~~ of any changes in any of the items set forth in subsection (1).
- 12 (3) The purchasing group shall register with and designate the Secretary of State as its
- 13 agent solely for the purpose of receiving legal documents or process, except that
- 14 such requirement shall not apply in the case of a purchasing group:
- 15 (a) Which in any state of the United States:
- 16 1. Was domiciled before April 1, 1986; and
- 17 2. Is domiciled on and after October 27, 1986;
- 18 (b) Which:
- 19 1. Before October 27, 1986, purchased insurance from an insurer licensed
- 20 in any state; and
- 21 2. Since October 27, 1986, purchased its insurance from an insurer licensed
- 22 in any state;
- 23 (c) Which was a purchasing group under the requirements of the Product Liability
- 24 Risk Retention Act of 1981 (P.L. 97-45) before October 27, 1986; and
- 25 (d) Which does not purchase insurance that was not authorized for purposes of an
- 26 exemption under that act, as in effect before October 27, 1986.
- 27 (4) Any purchasing group which was doing business in this state prior to July 13, 1990,

1 shall, within thirty (30) days after July 13, 1990, furnish notice to the
 2 commissioner~~[executive director]~~ pursuant to the provisions of this subtitle and
 3 furnish the information required pursuant to this subtitle.

4 ➔Section 1577. KRS 304.45-080 is amended to read as follows:

5 (1) All risk retention groups and insurers providing liability insurance to purchasing
 6 groups shall be subject to taxation and shall be deemed to be insurers for the
 7 purpose of assessing and collecting taxes on premiums. All risk retention groups
 8 and insurers issuing liability insurance policies to purchasing groups shall be subject
 9 to the taxes set forth in KRS 91A.080 and 136.340 and the surcharge imposed by
 10 KRS 136.392.

11 (2) All persons involved in the solicitation, negotiation, or procurement of liability
 12 insurance from a risk retention group or from an insurer issuing a liability insurance
 13 group to a purchasing group shall cooperate in the reporting and payment of taxes
 14 on premiums for risks located in this state.

15 (3) Failure of risk retention groups, insurers issuing liability insurance policies to
 16 purchasing groups, and any person involved in the solicitation, negotiation, or
 17 procurement of liability insurance from a risk retention group or from an insurer
 18 issuing a liability insurance policy to a purchasing group to pay taxes in accordance
 19 with this section or to cooperate in accordance with this section is a ground for
 20 suspension or revocation of certificates of authority, licenses, or permission to do
 21 business in this state, imposition of civil penalties, or both. The
 22 commissioner~~[executive director]~~ may take any action necessary to assure that
 23 applicable premium taxes are paid to the appropriate taxing authorities.

24 ➔Section 1578. KRS 304.45-110 is amended to read as follows:

25 (1) A risk retention group doing business in this state shall be subject to all applicable
 26 unfair claims settlement practices laws and regulations as provided in KRS 304.3-
 27 200, 304.12-220, and 304.12-230.

1 (2) The commissioner~~[executive director]~~ is authorized to make use of any of the
 2 powers established under the insurance statutes and regulations of this state to
 3 enforce the laws of this state so long as those powers are not specifically preempted
 4 by the Product Liability Risk Retention Act of 1981 (P.L. 97-45) and the Liability
 5 Risk Retention Act of 1986 (P.L. 99-563), 15 U.S.C. secs. 3901 et seq. This
 6 includes, but is not limited to, the commissioner's~~[executive director's]~~
 7 administrative authority to investigate, issue subpoenas, conduct depositions and
 8 hearings, issue orders, and impose penalties. Without regard to any investigation,
 9 administrative proceedings, or litigation, the commissioner~~[executive director]~~ can
 10 rely on the procedural law and regulations of the state. The injunctive authority of
 11 the commissioner~~[executive director]~~ in regard to risk retention groups is restricted
 12 by the requirement that any injunction be issued by a court of competent
 13 jurisdiction.

14 ➔Section 1579. KRS 304.45-140 is amended to read as follows:

15 The commissioner~~[executive director]~~ shall apply the fees set forth in KRS 304.4-010 to
 16 risk retention groups. Subtitle 4 of this chapter applies to this subtitle.

17 ➔Section 1580. KRS 304.45-150 is amended to read as follows:

18 The commissioner~~[executive director]~~ may promulgate reasonable regulations necessary
 19 for, or as an aid to the effectuation of, this subtitle.

20 ➔Section 1581. KRS 304.47-010 is amended to read as follows:

21 As used in Subtitle 47 of this chapter, unless the context requires otherwise:

22 (1) "Insurer" means any person, entity, organization, or reinsurer, including fraternal
 23 benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital,
 24 medical-surgical, dental, and health service corporation as defined in Subtitle 32 of
 25 this chapter, health maintenance organization as defined in Subtitle 38 of this
 26 chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or
 27 unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation

1 by or registration with the Department~~{Office}~~ of Insurance under this chapter, and
 2 any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.

3 (2) "Insurance policy" or "policy" means any individual or group policy, including
 4 those defined by KRS Chapter 342, certificate, or contract of an insurer as defined
 5 in subsection (1) of this section including reinsurance affecting the rights of any
 6 Kentucky resident or bearing a reasonable relation to Kentucky regardless of
 7 whether delivered or issued for delivery in Kentucky.

8 (3) "Insured" means any person who is a named insured or beneficiary under a policy as
 9 defined in subsection (2) of this section or a person who is not a named insured or
 10 beneficiary under a policy due to the fraudulent action of another, but who in good
 11 faith believes himself or herself to be an insured or beneficiary.

12 (4) "Law enforcement agency" means any federal, state, county, or consolidated police
 13 or law enforcement department and any prosecuting official of the federal, state,
 14 county, local, or consolidated government.

15 (5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill
 16 of lading, invoice, account, estimate of property damages, bill for services,
 17 diagnosis, prescription, hospital or physician record or report, X-ray, test result, or
 18 other evidence of loss, injury, or expense. A statement may be in any form,
 19 including oral, written, and electronic transmissions.

20 (6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky
 21 Department~~{Office}~~ of Insurance, its employees, or authorized representatives.

22 (7) "Criminal syndicate" means five (5) or more persons collaborating to promote or
 23 engage in any fraudulent insurance act, as set forth in KRS 304.47-020(1), on a
 24 continuing basis.

25 ➔Section 1582. KRS 304.47-020 is amended to read as follows:

26 (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance
 27 act" if he or she engages in any of the following, including but not limited to matters

1 relating to workers' compensation:

- 2 (a) Knowingly and with intent to defraud or deceive presents, causes to be
3 presented, or prepares with knowledge or belief that it will be presented to an
4 insurer, Board of Claims, Special Fund, or any agent thereof, any written or
5 oral statement as part of, or in support of, a claim for payment or other benefit
6 pursuant to an insurance policy or from a "self-insurer" as defined by KRS
7 Chapter 342, knowing that the statement contains any false, incomplete, or
8 misleading information concerning any fact or thing material to a claim;
- 9 (b) Knowingly and with intent to defraud or deceive presents, causes to be
10 presented, or prepares with knowledge or belief that it will be presented to an
11 insurer, Board of Claims, or any agent thereof, any statement as part of, or in
12 support of, an application for an insurance policy, for renewal, reinstatement,
13 or replacement of insurance, or in support of an application to a lender for
14 money to pay a premium, knowing that the statement contains any false,
15 incomplete, or misleading information concerning any fact or thing material to
16 the application;
- 17 (c) Knowingly and willfully transacts any contract, agreement, or instrument
18 which violates this title;
- 19 (d) Knowingly and with intent to defraud or deceive, receives money for the
20 purpose of purchasing insurance, and fails to obtain insurance;
- 21 (e) Knowingly and with intent to defraud or deceive, fails to make payment or
22 disposition of money or voucher as defined in KRS 304.17A-750, as required
23 by agreement or legal obligation, that comes into his or her possession while
24 acting as a licensee under this chapter;
- 25 (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates
26 of insurance, insurance identification cards, insurance binders, or any other
27 documents that purport to evidence insurance;

- 1 (g) Makes any false or fraudulent representation as to the death or disability of a
 2 policy or certificate holder in any written statement or certificate for the
 3 purpose of fraudulently obtaining money or benefit from an insurer;
- 4 (h) Engages in unauthorized insurance, as defined in KRS 304.11-030;
- 5 (i) Knowingly and with intent to defraud or deceive, presents, causes to be
 6 presented, or prepares with knowledge or belief that it will be presented to or
 7 by an insurer, or to the commissioner~~[executive director]~~, any statement,
 8 knowing that the statement contains any false, incomplete, or misleading
 9 information concerning any material fact or thing, as part of, or in support of
 10 one (1) or more of the following:
- 11 1. The rating of an insurance policy;
 - 12 2. The financial condition of an insurer;
 - 13 3. The formation, acquisition, merger, reconsolidation, dissolution, or
 14 withdrawal from one (1) or more lines of insurance in all or part of this
 15 Commonwealth by an insurer; or
 - 16 4. A document filed with the commissioner~~[executive director]~~;
- 17 (j) Knowingly and with intent to defraud or deceive, engages in any of the
 18 following:
- 19 1. Solicitation or acceptance of new or renewal insurance risks on behalf of
 20 an insolvent insurer; or
 - 21 2. Removal, concealment, alteration, tampering, or destruction of money,
 22 records, or any other property or assets of an insurer; or
- 23 (k) Assists, abets, solicits, or conspires with another to commit a fraudulent
 24 insurance act in violation of this subtitle.
- 25 (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person
 26 convicted of a violation of subsection (1) of this section shall be guilty of a
 27 misdemeanor where the aggregate of the claim, benefit, or money referred to

1 in subsection (1) of this section is less than or equal to three hundred dollars
2 (\$300), and shall be punished by:

- 3 1. Imprisonment for not more than one (1) year;
- 4 2. A fine, per occurrence, of not more than one thousand dollars (\$1,000)
5 per individual nor five thousand dollars (\$5,000) per corporation or
6 twice the amount of gain received as a result of the violation, whichever
7 is greater; or
- 8 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of
9 this paragraph.

10 (b) Except as provided in paragraph (c) of this subsection, where the claim,
11 benefit, or money referred to in subsection (1) of this section exceeds an
12 aggregate of three hundred dollars (\$300), a person convicted of a violation of
13 subsection (1) of this section shall be guilty of a felony and shall be punished
14 by:

- 15 1. Imprisonment for not less than one (1) nor more than five (5) years;
- 16 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000)
17 per individual nor one hundred thousand dollars (\$100,000) per
18 corporation or twice the amount of gain received as a result of the
19 violation, whichever is greater; or
- 20 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of
21 this paragraph.

22 (c) Any person, with the purpose to establish or maintain a criminal syndicate, or
23 to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty
24 of engaging in organized crime, a Class B felony, and shall be punished by:

- 25 1. Imprisonment for not less than ten (10) years nor more than twenty (20)
26 years;
- 27 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000)

per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or

3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.

(d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

(3) Any person damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

➔Section 1583. KRS 304.47-025 is amended to read as follows:

(1) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, and who knowingly engages or participates in the business of insurance in this Commonwealth, shall be guilty of a Class D felony.

(2) Any insurer that knowingly permits the participation in the business of insurance in this Commonwealth by a person who has been convicted of any felony offense

1 involving dishonesty or a breach of trust, or who has been convicted of a fraudulent
2 insurance act under this subtitle, shall be guilty of a criminal violation.

- 3 (3) Any person who has been convicted of any felony offense involving dishonesty or a
4 breach of trust, or who has been convicted of a fraudulent insurance act under this
5 subtitle, may engage in the business of insurance in this Commonwealth if he or she
6 has received written consent from the commissioner~~executive director~~, and that
7 consent specifically refers to this subsection.

8 ➔Section 1584. KRS 304.47-030 is amended to read as follows:

- 9 (1) All applications shall contain a statement in a form approved by the
10 Department~~Office~~ of Insurance that clearly states in substance the following:

11 "Any person who knowingly and with intent to defraud any insurance company or
12 other person files an application for insurance containing any materially false
13 information or conceals, for the purpose of misleading, information concerning any
14 fact material thereto commits a fraudulent insurance act, which is a crime."

- 15 (2) All claim forms shall contain a statement in a form approved by the
16 Department~~Office~~ of Insurance that clearly states in substance the following:

17 "Any person who knowingly and with intent to defraud any insurance company or
18 other person files a statement of claim containing any materially false information
19 or conceals, for the purpose of misleading, information concerning any fact material
20 thereto commits a fraudulent insurance act, which is a crime."

- 21 (3) Fraud warning statements shall not be required on applications or claim forms used
22 by reinsurers.

23 ➔Section 1585. KRS 304.47-040 is amended to read as follows:

- 24 (1) There is created within the Department~~Office~~ of Insurance a Division of
25 Insurance Fraud Investigation~~, which shall include a Workers' Compensation~~
26 ~~Branch~~.

- 27 (2) (a) The commissioner~~executive director~~ shall appoint qualified persons to serve

as special investigators for the Division of Insurance Fraud Investigation who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.

(b) The division staff also ~~{executive director shall appoint appropriate staff for the Workers' Compensation Branch which }~~ shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The positions~~{appointments}~~ authorized by this paragraph shall be in addition to the staff employed by the division as of December 12, 1996.

(3) The special investigator may:

(a) Administer oaths and affirmations;

(b) Order the attendance of witnesses or proffering of information and documentation;

(c) Collect evidence; and

(d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:

1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;

2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and

3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.

(4) The division may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.

1 (5) If the information the division seeks to obtain is located outside the state, the person
 2 so requested may make it available to the division or its representative to examine at
 3 the place where it is located. The division may designate representatives, including
 4 officials of the state in which the matter is located, to inspect the information on the
 5 division's behalf, and it may respond to similar requests from officials of other
 6 states.

7 (6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in
 8 any manner to interfere, either by abetting or assisting this resistance or otherwise
 9 interfering, with special investigators employed by the commissioner~~[executive~~
 10 ~~director]~~ under this subtitle in the duties imposed upon them by law, and shall be
 11 punishable as provided in KRS 520.090.

12 (7) The commissioner~~[executive director]~~ may obtain any evidence for use in criminal
 13 investigations according to KRS 304.2-340.

14 ➔Section 1586. KRS 304.47-050 is amended to read as follows:

15 (1) Any person, other than those specified in subsection (2) of this section, having
 16 knowledge or believing that a fraudulent insurance act or any other act or practice
 17 which, upon conviction, constitutes a felony or misdemeanor under the subtitle is
 18 being or has been committed may send to the division a report of information
 19 pertinent to this knowledge of or belief and any additional relevant information the
 20 commissioner~~[executive director]~~ may request.

21 (2) The following individuals having knowledge or believing that a fraudulent
 22 insurance act or any other act or practice which may constitute a felony or
 23 misdemeanor under this subtitle is being or has been committed shall send to the
 24 division a report or information pertinent to the knowledge or belief and additional
 25 relevant information that the commissioner~~[executive director]~~ or the
 26 commissioner's~~[his]~~ employees or agents may require:

27 (a) Any professional practitioner licensed or regulated by the Commonwealth,

1 except as provided by law;

2 (b) Any private medical review committee;

3 (c) Any insurer, agent, or other person licensed under this chapter; and

4 (d) Any employee of the persons named in paragraphs (a) to (c) of this subsection.

5 (3) The division or its employees or agents shall review this information or these
6 reports and select the information or reports that, in the judgment of the division,
7 may require further investigation. The division shall then cause an investigation of
8 the facts surrounding the information or report to be made to determine the extent,
9 if any, to which a fraudulent insurance act or any other act or practice which, upon
10 conviction, constitutes a felony or misdemeanor under this subtitle is being
11 committed.

12 (4) The Department~~[Office]~~ of Workers' Claims shall provide the division access to all
13 relevant information the commissioner~~[executive director]~~ may request.

14 (5) The division shall report any alleged violations of law which the investigations
15 disclose to the appropriate licensing agency and the Commonwealth's attorney,
16 Attorney General, or other prosecuting agency having jurisdiction with respect to a
17 violation. If prosecution by the Commonwealth's attorney, Attorney General, or
18 other prosecuting agency is not begun within sixty (60) days of the report, the
19 prosecuting attorney shall inform the division of the reasons for the lack of
20 prosecution. In addition to filing a report with the appropriate prosecuting agency,
21 the commissioner~~[executive director]~~ may, through the Attorney General, prosecute
22 violations of this subtitle in the Circuit Court of the county in which the alleged
23 wrongdoer resides or has his or her principal place of business, in the Circuit Court
24 of the county in which the fraudulent insurance act has been committed, or, with
25 consent of the parties, in the Franklin Circuit Court.

26 (6) Notwithstanding the provisions of subsections (1) to (5) of this section, any person
27 having knowledge or believing that a fraudulent insurance act or any other act that

may be prohibited under this subtitle is being or has been committed, may notify any law enforcement agency of his or her knowledge or belief and provide information relevant to the act, as may be requested by that agency, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss. Reporting to any other agency does not relieve those listed in subsection (2) of this section of their mandatory duty to report to the division.

(7) If the information referred to in this section is specifically requested by the division, any other law enforcement agency, or a prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.

(8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department~~Office~~ of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

➔Section 1587. KRS 304.47-055 is amended to read as follows:

(1) Documents, materials, or other information in the possession or control of the commissioner~~executive director~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to KRS 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless, after notice to the commissioner~~executive director~~ and a hearing, a court of competent jurisdiction determines the commissioner~~executive director~~ would not be unnecessarily

1 hindered. However, the commissioner~~[executive director]~~ may use the documents,
 2 materials, or other information in the furtherance of any regulatory or legal action
 3 brought as a part of the commissioner's~~[executive director's]~~ official duties.

4 (2) Neither the commissioner~~[executive director]~~ nor any person who received
 5 documents, materials, or other information while acting under the authority of the
 6 commissioner~~[executive director]~~ shall be permitted or required to testify in any
 7 private civil action concerning any confidential documents, materials, or
 8 information subject to subsection (1) of this section.

9 (3) In order to assist in the performance of the commissioner's~~[executive director's]~~
 10 duties, the commissioner~~[executive director]~~:

11 (a) May share documents, materials, or other information, including the
 12 confidential and privileged documents, materials, or information subject to
 13 subsections (1) and (2) of this section, with other state, federal, and
 14 international regulatory agencies, with the National Association of Insurance
 15 Commissioners, its affiliates or subsidiaries, and with local, state, federal, and
 16 international law enforcement authorities, if the recipient agrees to maintain
 17 the confidentiality and privileged status of the documents, materials, or other
 18 information;

19 (b) May receive documents, materials, or other information, including otherwise
 20 confidential and privileged documents, materials, or information from the
 21 National Association of Insurance Commissioners, its affiliates or
 22 subsidiaries, and from regulatory and law enforcement officials of other
 23 foreign or domestic jurisdictions, and shall maintain as confidential and
 24 privileged any documents, materials, or information received with notice or
 25 the understanding that it is confidential and privileged under the laws of the
 26 jurisdiction that is the source of the documents, materials, or information;

27 (c) May enter into agreements governing the sharing and use of information

1 including the furtherance of any regulatory or legal action brought as part of
 2 the recipient's official duties.

- 3 (4) No waiver of any applicable privilege or claim of confidentiality in the documents,
 4 materials, or information shall occur as a result of disclosure to the
 5 commissioner~~[executive director]~~ under this subtitle or as a result of sharing as
 6 authorized in subsection (3) of this section.

7 ➔Section 1588. KRS 304.47-060 is amended to read as follows:

- 8 (1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to
 9 civil liability for libel, slander, or any other relevant tort by virtue of filing reports or
 10 furnishing other information required by this chapter or requested by the division or
 11 its authorized representative. No civil cause of action of any nature shall arise
 12 against the person:

13 (a) For any information relating to suspected fraudulent insurance acts furnished
 14 to or received from law enforcement officials, their agents, or employees;

15 (b) For any information relating to suspected fraudulent insurance acts furnished
 16 to or received from other persons subject to the provisions of this subtitle,
 17 including those designated by KRS 304.47-080;

18 (c) For any information furnished to or received from the Department~~[Office]~~ of
 19 Workers' Claims, its agents, or employees; or

20 (d) For any information furnished in reports to the commissioner~~[executive~~
 21 ~~director]~~ or the National Association of Insurance Commissioners.

- 22 (2) The commissioner~~[executive director]~~ or any employee or agent of the
 23 Department~~[Office]~~ of Insurance shall not be subject to civil liability for libel,
 24 slander, or any other relevant tort. No civil cause of action shall exist against these
 25 persons by virtue of the execution of official activities or duties of the
 26 commissioner~~[executive director]~~ or the division or by virtue of the publication of
 27 any report or bulletin related to the official activities or duties of the

1 commissioner~~[executive director]~~.

2 (3) This subtitle shall not abrogate or modify any common law or statutory privilege or
3 immunity enjoyed by any person.

4 ➔Section 1589. KRS 304.47-070 is amended to read as follows:

5 All costs of administration and operation of the division shall be borne by the
6 Department~~[Office]~~ of Insurance. Any money or other property that is awarded to the
7 division as costs of investigation or as a fine shall be credited to the Department~~[Office]~~
8 of Insurance, and the money shall be used to help finance the division.

9 ➔Section 1590. KRS 304.48-020 is amended to read as follows:

10 (1) "Administrator" means an individual, partnership, corporation, association, or other
11 legal entity engaged by a liability self-insurance group's board of trustees to carry
12 out the policies established by the group's board of trustees and to provide day-to-
13 day management of the group.

14 (2) "Bona fide association" as used in KRS 304.48-030 shall mean an association
15 which has a substantial noninsurance purpose or has other characteristics of stability
16 in finances and membership.

17 (3) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~
18 of the Department~~[Office]~~ of Insurance.

19 (4) "Deceptive" means an act, practice, or statement which has the tendency or capacity
20 to deceive, without regard to whether there is an intent to deceive or whether any
21 person has suffered loss or injury as a result of the act, practice, or statement.

22 (5) "Governmental entity" means the Commonwealth of Kentucky, other states, or the
23 United States, their political subdivisions, municipal corporations, or public
24 agencies.

25 (6) "Insolvent" or "insolvency" means the inability of a liability self-insurance group to
26 pay its outstanding lawful obligations as they mature in the regular course of
27 business, as may be shown either by an excess of its required reserves and other

1 liability over its assets or by its not having sufficient assets to reinsure all of its
2 outstanding liabilities after paying all accrued claims owed by it.

3 (7) "Liability self-insurance group" means a group described in KRS 304.48-030.

4 (8) "Person" includes, but is not limited to, any individual, partnership, association,
5 trust, or corporation.

6 (9) "Qualified actuary" means a member of the American Academy of Actuaries or a
7 fellow of the Casualty Actuarial Society.

8 (10) "Service company" means a person or entity which provides services not provided
9 by the administrator, including, but not limited to, claims adjustment, safety
10 engineering, compilation of statistics in preparation of contribution and
11 assessments, loss, and tax reports, preparation of other required self-insurance
12 reports, development of members' contributions, assessments, and fees, and
13 administration of a claim fund.

14 (11) "Unfair" refers to an act, practice, or statement which is unconscionable.

15 (12) "Agent" means any person directly or indirectly associated with such organization
16 who engages in solicitation or enrollment of persons for profit or pecuniary gain in a
17 liability self-insurance group.

18 ➔Section 1591. KRS 304.48-040 is amended to read as follows:

19 No person shall in this state be, act as, or hold himself or herself out as a liability self-
20 insurance group unless he or she holds a certificate of filing from the
21 commissioner~~[executive—director]~~. All certificates of filing issued by the
22 commissioner~~[executive—director]~~ prior to July 15, 1994, shall remain in full force and
23 effect unless revoked or suspended by the commissioner~~[executive—director]~~ pursuant to
24 KRS 304.48-220.

25 ➔Section 1592. KRS 304.48-050 is amended to read as follows:

26 A proposed liability self-insurance group shall file with the commissioner~~[executive~~
27 ~~director]~~ an application for a certificate of filing accompanied by a nonrefundable filing

1 fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the
 2 commissioner~~[executive director]~~ upon a form prescribed by the commissioner ~~[him]~~
 3 and shall set forth or be accompanied by:

- 4 (1) The group's name, location of its principal office, date of organization, name and
 5 address of each member (if known at the time of application; if unknown, a
 6 description of the group to be solicited for membership), and identification of its
 7 fiscal year;
- 8 (2) A copy of the articles of association;
- 9 (3) A copy of agreements with the administrator and with any service company;
- 10 (4) A copy of the bylaws of the proposed group;
- 11 (5) A copy of the agreement between the group and each member jointly and severally
 12 binding the group and each member thereof to comply with the provisions of this
 13 subtitle and the decision of the trustees for operation of the liability self-insurance
 14 group. If the liability self-insurance group is composed of governmental entities and
 15 received its certificate of filing prior to the enactment of this section, the agreement
 16 may provide that it does not jointly and severally bind group members to pay the
 17 debts of others. Liability self-insurance groups may limit group members' joint and
 18 several liability and the limits shall be established in terms of members' annual
 19 contributions;
- 20 (6) Designation of the initial board of trustees and administrator; and
- 21 (7) The address where books and records of the group will be maintained at all times.

22 ➔Section 1593. KRS 304.48-060 is amended to read as follows:

23 Upon receipt of an application for issuance for a certificate of filing, the
 24 commissioner~~[executive director]~~ shall issue or deny the same. Issuance of a certificate of
 25 filing shall be granted only if the commissioner~~[executive director]~~ finds that the
 26 applicant has complied with KRS 304.48-050, has paid the application fee, and the
 27 commissioner~~[executive director]~~ is satisfied that the following conditions are met:

- 1 (1) The persons responsible for the conduct of the affairs of the liability self-insurance
- 2 group are competent, trustworthy, and possess good reputation;
- 3 (2) The liability self-insurance group is financially responsible and may reasonably be
- 4 expected to meet its obligations to participants and prospective participants. In
- 5 making this determination, the commissioner~~[executive director]~~ may consider:
- 6 (a) The adequacy of working capital;
- 7 (b) Any agreement with an insurer, a government, or any other organization for
- 8 insuring the payment of liability claims or the provision for automatic
- 9 applicability of an alternative coverage in the event of discontinuance of the
- 10 self-insurance group; and
- 11 (c) Compliance with KRS 304.48-070, as a guarantee that the obligations will be
- 12 duly performed.

13 ➔Section 1594. KRS 304.48-070 is amended to read as follows:

- 14 (1) This section applies to a group applying for and holding a certificate of filing as a
- 15 liability self-insurance group.
- 16 (2) To obtain and to maintain its certificate of filing a liability self-insurance group
- 17 shall have sufficient financial strength to pay all public or professional liabilities
- 18 covered by the group, including known claims and expenses and incurred but not
- 19 reported claims and expenses.
- 20 (3) The commissioner~~[executive director]~~, if not satisfied with the financial strength of
- 21 a liability self-insurance group, may require any or all of the following of a liability
- 22 self-insurance group:
- 23 (a) Security in the form and amount prescribed by the commissioner~~[executive~~
- 24 ~~director]~~ as follows:
- 25 1. A surety bond issued by a corporate surety authorized to transact
- 26 business in the Commonwealth of Kentucky; or
- 27 2. Any financial security endorsement issued as part of an acceptable

1 excess insurance contract issued by an authorized insurer may be used to
 2 meet all or part of the security requirement. The bond or financial
 3 security endorsement shall be for the benefit of the insured creditors
 4 solely to pay claims and associated expenses and shall be payable upon
 5 the failure of the group to pay professional or public liability claims it is
 6 legally obligated to pay. The commissioner~~[executive director]~~ may
 7 establish and adjust the requirements for the amount of security based on
 8 differences among groups in their size, types or business, years in
 9 existence, or other relevant factors.

10 (b) Specific and aggregate excess insurance in a form, in an amount, and issued
 11 by an insurer acceptable to the commissioner~~[executive director]~~.

12 (c) A fidelity bond for the administrator and a fidelity bond for the service
 13 company in forms and amounts prescribed by the commissioner~~[executive director]~~.
 14 The commissioner~~[executive director]~~ may require the service
 15 company providing claim service to furnish a performance bond in a form and
 16 amount prescribed by the commissioner~~[executive director]~~.

17 ➔Section 1595. KRS 304.48-090 is amended to read as follows:

18 The funds of a liability self-insurance group shall be invested only in securities or other
 19 investments permitted by subtitle 7 of this chapter, or such other securities or investments
 20 as the commissioner~~[executive director]~~ may permit by administrative regulation.

21 ➔Section 1596. KRS 304.48-110 is amended to read as follows:

22 The commissioner~~[executive director]~~ or any person authorized by him or her shall have
 23 power to examine the financial condition, affairs, and management of any liability self-
 24 insurance group subject to the provisions of this subtitle. The commissioner~~[He]~~ shall
 25 have free access to all the books, papers, and documents relating to the business of the
 26 organization, and may summon witnesses and administer oaths and affirmations in the
 27 examination of the directors, trustees, officers, agents, representatives, or employees of

any group, or any person in relation to its affairs, transactions, or conditions. *The commissioner*~~[He]~~ shall so examine each liability self-insurance group subject to the provisions of this subtitle not less frequently than every four (4) years. Information and other data obtained through the examination shall be subject to the provisions of KRS 304.2-210 to 304.2-290.

➔Section 1597. KRS 304.48-130 is amended to read as follows:

(1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the *commissioner*~~[executive director]~~ pursuant to KRS 304.48-220.

(2) The *commissioner*~~[executive director]~~ shall not grant the request of the liability self-insurance group to terminate its certificate of filing unless the group has filed with the *commissioner*~~[executive director]~~ a statement describing what arrangements, if any, have been made to pay obligations of the group, including both known claims and expenses and incurred but not reported claims and expenses.

(3) Subject to filing with the *commissioner*~~[executive director]~~, a liability self-insurance group may merge with another liability self-insurance group. As a result of any merger, the resulting liability self-insurance group shall assume in full all obligations of the constituent groups.

➔Section 1598. KRS 304.48-140 is amended to read as follows:

(1) Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the liability self-insurance group or by other laws of the Commonwealth. Except for liability self-insurance groups formed by governmental entities, the trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the liability self-insurance group, such as assuring that there is adequate funding to

1 cover professional or public liabilities, assuring that all claims are paid promptly,
2 and that all necessary precautions are taken to safeguard the assets of the group.

3 (2) The board of trustees shall:

4 (a) Maintain responsibility for all moneys collected or disbursed from the group;

5 (b) Maintain minutes of its meetings and make the minutes available to the
6 commissioner~~executive director~~; and,

7 (c) Designate an administrator to carry out the policies established by the board of
8 trustees and to provide day-to-day management of the group, and delineate in
9 the written minutes of its meetings the areas of authority it delegates to the
10 administrator.

11 (3) The board of trustees shall not:

12 (a) Extend credit to individual group members for payment of contributions or
13 assessments, except pursuant to payment plans filed with the
14 commissioner~~executive director~~; or

15 (b) Permit the loan of any moneys to, or borrow any moneys from, the group or in
16 the name of the group. However, a liability self-insurance group formed by
17 governmental entities may borrow moneys in the name of the group.

18 (4) In its discretion, the liability self-insurance group may refer to its trustees as
19 directors. If this is done, the provisions of this subtitle referring to trustees shall be
20 construed as referring to directors.

21 ➔Section 1599. KRS 304.48-170 is amended to read as follows:

22 (1) All liability self-insurance groups shall file with the commissioner~~executive~~
23 ~~director~~ a statement of financial condition audited by an independent certified
24 public accountant on or before one hundred and twenty (120) days from the end of
25 the group's fiscal year for the immediately preceding fiscal year. The financial
26 statement shall be in a form approved by the commissioner~~executive director~~ and
27 shall include:

(a) Actuarially-appropriate reserves for:

1. Known claims and expenses associated therewith.
2. Claims incurred but not reported and any expenses associated therewith.
3. Unearned contributions and assessments.
4. Bad debts, which reserves shall be known as liabilities.

(b) An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.

(2) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.

(3) The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the commissioner~~executive director~~.

→Section 1600. KRS 304.48-180 is amended to read as follows:

Liability self-insurance groups shall file with the commissioner~~executive director~~ their rates, underwriting guidelines, evidence of coverage, and any changes therein. The filing shall be accompanied by a filing fee of five dollars (\$5) per filing.

→Section 1601. KRS 304.48-220 is amended to read as follows:

(1) The commissioner~~executive director~~ may suspend or revoke any certificate of filing issued to a liability self-insurance group under this subtitle if the commissioner~~he~~ finds that any of the following conditions exist:

(a) The liability self-insurance group is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, unless amendments to the submissions have been filed with and

1 approved by the commissioner~~executive director~~;

2 (b) The liability self-insurance group is no longer financially responsible and may
3 reasonably be expected to be unable to meet its obligations to participants or
4 prospective participants;

5 (c) The liability self-insurance group, or any person at its direction, has advertised
6 or merchandised its services in an untrue, misrepresentative, misleading,
7 deceptive, or unfair manner;

8 (d) The liability self-insurance group has engaged in any unfair or deceptive
9 practices under its certificate of filing;

10 (e) The liability self-insurance group has failed to correct a violation of this
11 subtitle or the administrative regulations adopted thereunder, within a
12 reasonable time period established by the commissioner~~executive director~~ in
13 administrative regulations.

14 (2) A certificate of filing shall be suspended or revoked only after compliance with the
15 hearing procedure set forth in KRS 304.2-310 to 304.2-370.

16 (3) When a certificate of filing of a liability self-insurance group is suspended, the
17 group shall not, during the period of suspension, enroll any new participants and
18 shall not engage in any advertising or solicitation.

19 (4) If the certificate of filing of a liability self-insurance group is revoked, the group
20 shall proceed, immediately following the effective date of the order of revocation, to
21 wind up its affairs, and shall conduct no further business except as may be essential
22 to the orderly conclusion of the affairs of the organization. It shall engage in no
23 further advertising or solicitation. The commissioner~~executive director~~ may, by
24 written order, prevent further operation of the group as he or she may find to be in
25 the best interest of the participants, to the end that the participants will be afforded
26 the greatest practical opportunity to obtain liability coverage elsewhere. If the
27 commissioner~~executive director~~ permits further operation, the liability self-

1 insurance group shall continue to collect the contributions and assessments required
2 of participants.

3 ➔Section 1602. KRS 304.48-230 is amended to read as follows:

4 The commissioner~~[executive director]~~ may promulgate reasonable administrative
5 regulations not inconsistent with the provisions of this subtitle that the commissioner~~[he]~~
6 deems necessary for the proper administration of this subtitle. Nothing in this subtitle nor
7 any administrative regulation adopted under the authority of this subtitle shall require any
8 liability self-insurance group formed by public entities or its members, to take any action
9 in violation of the Constitution of the Commonwealth of Kentucky.

10 ➔Section 1603. KRS 304.48-240 is amended to read as follows:

11 (1) No person shall make any deceptive statement or omit material facts in connection
12 with solicitation for membership in a liability self-insurance group.

13 (2) Liability self-insurance groups shall not engage in unfair claims settlement practices
14 and shall:

15 (a) Respond to claimant inquiries within fifteen (15) working days.

16 (b) Respond to Department~~[Office]~~ of Insurance inquiries concerning claims
17 within fifteen (15) working days.

18 (c) Complete the investigation of losses within thirty (30) days from the date the
19 group has notice of a loss. An additional thirty (30) day period may be taken if
20 reasonably necessary and upon written notice to the claimant.

21 (d) Not continue negotiations for settlement of a claim directly with a claimant
22 who is neither an attorney nor represented by an attorney until the claimant's
23 rights may be affected by a statute of limitations, a policy, or contract time
24 limit without giving the claimant written notice at least sixty (60) days before
25 the date on which the time limit shall expire and affect the claimant's rights.

26 (e) Not commit any other unfair or deceptive act or practice relating to claim
27 settlement.

1 (3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices
 2 under its certificate of filing from the commissioner~~[executive director]~~.

3 ➔Section 1604. KRS 304.48-250 is amended to read as follows:

4 (1) If the assets of a liability insurance group are at any time insufficient to enable the
 5 group to discharge its legal liabilities, other obligations, and to maintain the
 6 required reserves under this subtitle, the group shall immediately levy an assessment
 7 upon its members for the amount necessary to make up the deficiency.

8 (2) If there is a deficiency in any fund year, the deficiency shall be made up
 9 immediately, from the following:

10 (a) Surplus from a fund year other than the current fund year after prior notice of
 11 the transfer has been given to the commissioner~~[executive director]~~;

12 (b) Administrative funds;

13 (c) Assessment of membership; or

14 (d) Alternate methods as the commissioner~~[executive director]~~ may direct or
 15 approve.

16 (3) If a liability self-insurance group fails to assess its members within thirty (30) days
 17 to make up a deficit, the commissioner~~[executive director]~~ shall order it to do so.
 18 This subsection shall not apply to liability self-insurance groups formed by
 19 governmental entities which do not have joint and several liability.

20 (4) If a liability self-insurance group fails to make the required assessment of its
 21 members within thirty (30) days after the commissioner~~[executive director]~~ orders
 22 it to do so, or if the deficiency is not fully made up within sixty (60) days after the
 23 date on which the assessment is made, or within a longer period of time as may be
 24 permitted by the commissioner~~[executive director]~~, the group shall be determined
 25 to be insolvent.

26 ➔Section 1605. KRS 304.48-260 is amended to read as follows:

27 (1) After a hearing or upon agreement by the liability self-insurance group, the

commissioner~~[executive director]~~ may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a liability self-insurance group, or both, for:

- (a) Violations of this subtitle or administrative regulations adopted thereunder;
- (b) Obtaining a certificate of filing by unfair or deceptive means;
- (c) Operating in a financially hazardous manner;
- (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
- (e) Unfair or deceptive business practices.

(2) The **commissioner**~~[executive director]~~, in his **or her** discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any liability self-insurance group upon the commencement of the following proceedings:

- (a) Receivership;
- (b) Conservatorship;
- (c) Rehabilitation; or
- (d) Other delinquency proceedings.

➔Section 1606. KRS 304.49-010 is amended to read as follows:

As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

- (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- (2) "Agency captive insurer" means a captive insurer that is owned by one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.

- 1 (3) "Captive insurer" means any pure captive insurer, consortium captive insurer,
 2 sponsored captive insurer, or industrial insured captive insurer formed or issued a
 3 certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For
 4 purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure
 5 captive insurer with respect to operations in Kentucky, unless otherwise permitted
 6 by the commissioner~~[executive director]~~.
- 7 (4) "Consortium" means any legal association of individuals, corporations,
 8 partnerships, or associations that has been in continuous existence for at least one
 9 (1) year, the member organizations of which collectively, or which does itself:
- 10 (a) Own, control, or hold with power to vote all of the outstanding voting
 11 securities of a consortium captive insurer incorporated as a stock insurer; or
 12 (b) Have complete voting control over a consortium captive insurer incorporated
 13 as a mutual insurer; or
 14 (c) The member organizations of which collectively constitute all of the
 15 subscribers of a consortium captive insurer formed as a reciprocal insurer.
- 16 (5) "Consortium captive insurer" means any company that insures risks of the member
 17 organizations of the consortium and their affiliated companies.
- 18 (6) "Excess workers' compensation insurance" means, in the case of an employer that
 19 has insured or self-insured its workers' compensation risks in accordance with
 20 applicable state or federal law, insurance in excess of a specified per incident or
 21 aggregate limit established by the commissioner~~[executive director]~~.
- 22 (7) "Industrial insured" means an insured as defined in KRS 304.11-020(1).
- 23 (8) "Industrial insured captive insurer" means any company that insures risks of the
 24 industrial insureds that comprise the industrial insured group, and their affiliated
 25 companies.
- 26 (9) "Industrial insured group" means any group that meets either of the following
 27 criteria:

- 1 (a) Any group of industrial insureds that collectively:
- 2 1. Own, control, or hold with power to vote all of the outstanding voting
- 3 securities of an industrial insured captive insurer incorporated as a stock
- 4 insurer;
- 5 2. Have complete voting control over an industrial insured captive insurer
- 6 incorporated as a mutual insurer; or
- 7 3. Constitute all of the subscribers of an industrial insured captive insurer
- 8 formed as a reciprocal insurer; or
- 9 (b) Any group which is created under the Product Liability Risk Retention Act of
- 10 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other
- 11 limited liability association.
- 12 (10) "Member organization" means any individual, corporation, partnership, or
- 13 association that belongs to a consortium.
- 14 (11) "Parent" means a corporation, partnership, or individual that directly or indirectly
- 15 owns, controls, or holds with power to vote more than fifty percent (50%) of the
- 16 outstanding voting securities of a pure captive insurer.
- 17 (12) "Pure captive insurer" means any company that insures risks of its parent and
- 18 affiliated companies or controlled unaffiliated business.
- 19 (13) "Controlled unaffiliated business" means any company:
- 20 (a) That is not in the corporate system of a parent and affiliated companies;
- 21 (b) That has an existing contractual relationship with a parent or affiliated
- 22 company; and
- 23 (c) Whose risks are managed by a pure captive insurer in accordance with KRS
- 24 304.49-170.
- 25 (14) "Foreign captive insurer" means any insurer formed to write insurance business for
- 26 its parents and affiliates and licensed pursuant to the laws of any state other than
- 27 Kentucky which imposes statutory or regulatory standards in a form acceptable to

1 the commissioner~~[executive director]~~ on companies transacting the business of
 2 insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive
 3 insurers formed under the laws of any jurisdiction other than a state of the United
 4 States shall be treated as a foreign captive insurer unless the context requires
 5 otherwise.

6 (15) "Branch business" means any insurance business transacted by a branch captive
 7 insurer in Kentucky.

8 (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of
 9 authority by the commissioner~~[executive director]~~ to transact the business of
 10 insurance in Kentucky through a business unit with a principal place of business in
 11 Kentucky.

12 (17) "Branch operations" means any business operations of a branch captive insurer in
 13 Kentucky.

14 (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates
 15 thereof, that are insured by a sponsored captive insurer, where the losses of the
 16 participant are limited through a participant contract to the assets of a protected cell.

17 (19) "Participant contract" means a contract by which a sponsored captive insurer insures
 18 the risks of a participant and limits the losses of the participant to the assets of a
 19 protected cell.

20 (20) "Protected cell" means a separate account established and maintained by a
 21 sponsored captive insurer for one (1) participant.

22 (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined
 23 by KRS 304.27-010.

24 (22) "Special purpose captive insurer" means any person that is licensed under this
 25 chapter and designated as a special purpose captive insurer by the
 26 commissioner~~[executive director]~~. A person may be designated as a special purpose
 27 captive insurer if it is established for one (1) specific purpose or transaction, and

1 where it is desirable to isolate the purpose or transaction from the other activities of
 2 a party or parties involved in the transaction, or where the transaction dictates that
 3 the vehicle should not be treated as controlled or owned by any other party to that
 4 transaction.

5 (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is
 6 approved by the commissioner~~[executive director]~~ to provide all or part of the
 7 capital and surplus required by applicable law and to organize and operate a
 8 sponsored captive insurer.

9 (24) "Sponsored captive insurer" means any captive insurer:

- 10 (a) In which the minimum capital and surplus required by applicable law is
 11 provided by one (1) or more sponsors;
- 12 (b) That is formed or issued a certificate of authority under the provisions of this
 13 subtitle;
- 14 (c) That insures the risks of separate participants through contract; and
- 15 (d) That segregates each participant's liability through one (1) or more protected
 16 cells.

17 ➔Section 1607. KRS 304.49-020 is amended to read as follows:

18 (1) Any captive insurer, when permitted by its articles of incorporation, charter, or
 19 other organizational document, may apply to the commissioner~~[executive director]~~
 20 for a certificate of authority to engage in any and all kinds of insurance defined in
 21 Subtitle 5 of this chapter; provided, however, that:

- 22 (a) No pure captive insurer may insure any risks other than those of its parent and
 23 affiliated companies or controlled unaffiliated business;
- 24 (b) No consortium captive insurer may insure any risks other than those of the
 25 member organizations of its consortium and their affiliated companies;
- 26 (c) No industrial insured captive insurer may insure any risks other than those of
 27 the industrial insureds that comprise the industrial insured group and their

1 affiliated companies;

2 (d) No captive insurer may provide personal motor vehicle or homeowner's
3 insurance coverage or any component thereof;

4 (e) No captive insurer may accept or cede reinsurance except as provided in KRS
5 304.49-110;

6 (f) No captive insurer that is issued an initial certificate of authority on or after
7 July 1, 2006, shall directly provide workers' compensation insurance;
8 however, any captive insurer may provide excess workers' compensation
9 insurance to its parent and affiliated companies, unless prohibited by the laws
10 of the state having jurisdiction over the transaction. Any captive insurer may
11 reinsure workers' compensation of a qualified self-insured plan of its parent
12 and affiliated companies;

13 (g) Any captive insurer which insures risks described in KRS 304.5-020 and
14 304.5-040 shall comply with all applicable state laws;

15 (h) No branch captive insurer may write any business in Kentucky except
16 insurance or reinsurance of the employee benefit business of its parent and
17 affiliated companies which is subject to the provisions of the Employee
18 Retirement Income Security Act of 1974, as amended; and

19 (i) No sponsored captive insurer may insure any risks other than those of its
20 participants.

21 (2) No captive insurer shall do any insurance business in Kentucky unless:

22 (a) It first obtains from the commissioner~~[executive director]~~ a certificate of
23 authority authorizing it to do insurance business in Kentucky;

24 (b) Its board of directors, or in the case of a reciprocal insurer, its subscribers'
25 advisory committee, holds at least one (1) meeting each year in Kentucky; and

26 (c) It maintains its principal place of business in Kentucky or, in the case of a
27 branch captive insurer, maintains the principal place of business for its branch

1 operations in Kentucky.

2 (3) Before receiving a certificate of authority, a captive insurer formed as a corporation
 3 shall file with the commissioner~~[executive director]~~ a certified copy of its charter
 4 and bylaws, a statement under oath of its president and secretary showing its
 5 financial condition, and any other statements or documents required by the
 6 commissioner~~[executive director]~~;

7 (4) Before receiving a certificate of authority, a captive insurer formed as a reciprocal
 8 insurer shall:

9 (a) File with the commissioner~~[executive director]~~ a certified copy of the power
 10 of attorney of its attorney-in-fact, a certified copy of its subscribers'
 11 agreement, a statement under oath of its attorney-in-fact showing its financial
 12 condition, and any other statements or documents required by the
 13 commissioner~~[executive director]~~; and

14 (b) Submit to the commissioner~~[executive director]~~ a sample of the coverages,
 15 deductibles, coverage limits, and rates, together with any additional
 16 information required by the commissioner~~[executive director]~~. In the event of
 17 any subsequent material change in any item in the samples, the reciprocal
 18 captive insurer shall submit to the commissioner~~[executive director]~~ for
 19 approval an appropriate revision. The reciprocal captive insurer shall not offer
 20 any coverage until the forms are approved by the commissioner~~[executive~~
 21 ~~director]~~. The reciprocal captive insurer shall not use any initial rate until it is
 22 approved by the commissioner~~[executive director]~~ and shall inform the
 23 commissioner~~[executive director]~~ of any material change in rates within thirty
 24 (30) days of the adoption of the change.

25 (5) In addition to the information required by subsection (3) or (4) of this section, each
 26 applicant captive insurer shall file with the commissioner~~[executive director]~~
 27 evidence of the following:

- 1 (a) The amount and liquidity of its assets relative to the risks to be assumed;
- 2 (b) The adequacy of the expertise, experience, and character of the person or
- 3 persons who will manage it;
- 4 (c) The overall soundness of its plan of operation;
- 5 (d) The adequacy of the loss prevention programs of its parent, member
- 6 organizations, or industrial insureds as applicable; and
- 7 (e) Any other factors deemed relevant by the commissioner~~executive director~~ in
- 8 ascertaining whether the proposed captive insurer will be able to meet its
- 9 policy obligations.
- 10 (6) In addition to the information required by subsections (3), (4), and (5) of this
- 11 section, each applicant-sponsored captive insurer shall file with the
- 12 commissioner~~executive director~~ the following:
 - 13 (a) A business plan demonstrating how the applicant will account for the loss and
 - 14 expense experience of each protected cell at a level of detail found to be
 - 15 sufficient by the commissioner~~executive director~~ and how it will report the
 - 16 experience to the commissioner~~executive director~~;
 - 17 (b) A statement acknowledging that all financial records of the sponsored captive
 - 18 insurer, including records pertaining to any protected cells, shall be made
 - 19 available for inspection or examination by the commissioner~~executive~~
 - 20 ~~director~~;
 - 21 (c) All contracts or sample contracts between the sponsored captive insurer and
 - 22 any participants; and
 - 23 (d) Evidence that expenses shall be allocated to each protected cell in a fair and
 - 24 equitable manner.
- 25 (7) All portions of license applications reasonably designated confidential by the
- 26 applicant, and all examination reports, preliminary examination reports, working
- 27 papers, recorded information, other documents, and any copies of any of the

foregoing, produced or obtained by or submitted or disclosed to the commissioner~~executive director~~ related to an examination pursuant to this subtitle shall, unless the prior written consent of the captive insurer to which it pertains has been obtained, be given confidential treatment, and shall not be subject to civil subpoena, made public by the commissioner~~executive director~~, or provided or disclosed to any other person at any time except to:

- (a) The insurance department of any state, country, or alien jurisdiction; or
- (b) To a law enforcement official or agency of the Commonwealth of Kentucky, any other state, or alien jurisdiction, as long as the official or agency agrees in writing to hold it confidential and in a manner consistent with this section.

(8) Each captive insurer shall pay to the commissioner~~executive director~~ a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The commissioner~~executive director~~ is authorized to retain legal, financial, and examination services from outside the department~~office~~ to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.

➔Section 1608. KRS 304.49-040 is amended to read as follows:

- (1) No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:
 - (a) In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);
 - (b) In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars (\$750,000);
 - (c) In the case of an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000);

- 1 (d) In the case of a sponsored captive insurer, not less than one million dollars
2 (\$1,000,000);
- 3 (e) In the case of an agency captive insurer, not less than five hundred thousand
4 dollars (\$500,000); and
- 5 (f) In the case of a special purpose captive insurer, not less than two hundred fifty
6 thousand dollars (\$250,000), or another amount determined by the
7 commissioner~~executive director~~.
- 8 (2) Notwithstanding the requirements of subsection (1) of this section, no captive
9 insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall
10 be issued a certificate of authority unless it shall possess and thereafter maintain
11 free surplus of one million dollars (\$1,000,000).
- 12 (3) The commissioner~~executive director~~ may prescribe additional capital and surplus
13 based upon the type, volume, and nature of insurance business transacted.
- 14 (4) Capital and surplus may be in the form of cash or an irrevocable letter of credit
15 issued by a bank approved by the commissioner~~executive director~~ and chartered
16 by the Commonwealth of Kentucky or a member bank of the Federal Reserve
17 System, or other assets as may be approved by the commissioner~~executive~~
18 ~~director~~.
- 19 (5) In the case of a branch captive insurer, as security for the payment of liabilities
20 attributable to the branch operations, the commissioner~~executive director~~ shall
21 require that a separate trust fund, funded by an irrevocable letter of credit or other
22 acceptable asset, be established and maintained in the United States for the benefit
23 of United States policyholders and United States ceding insurers under insurance
24 policies issued or reinsurance contracts issued or assumed, by the branch captive
25 insurer through its branch operations. The amount of this security may be no less
26 than the capital and surplus required in this section and the reserves on the
27 insurance policies or the reinsurance contracts, including reserves for losses,

1 allocated loss adjustment expenses, incurred but not reported losses, and unearned
 2 premiums with regard to business written through the branch operations; provided,
 3 however, the commissioner~~[executive director]~~ may permit a branch captive insurer
 4 that is required to post security for loss reserves on branch business by its reinsurer
 5 to reduce the funds in the trust account required by this section by the same amount
 6 so long as the security remains posted with the reinsurer. If the form of security
 7 selected is a letter of credit, the letter of credit must be established by, or issued or
 8 confirmed by, a bank chartered in Kentucky or a member bank of the Federal
 9 Reserve System.

10 ➔Section 1609. KRS 304.49-050 is amended to read as follows:

11 No captive insurer may pay a dividend out of, or other distribution with respect to, capital
 12 or surplus, in excess of the limitations set forth in KRS 304.24-320 and 304.24-330
 13 without the prior approval of the commissioner~~[executive director]~~. Approval of an
 14 ongoing plan for the payment of dividends or other distributions shall be conditioned
 15 upon the retention, at the time of each payment, of capital or surplus in excess of amounts
 16 specified by, or determined in accordance with formulas approved by, the
 17 commissioner~~[executive director]~~.

18 ➔Section 1610. KRS 304.49-060 is amended to read as follows:

- 19 (1) A pure captive insurer or a sponsored captive insurer shall be incorporated as a
 20 stock insurer with its capital divided into shares and held by the stockholders.
- 21 (2) A consortium captive insurer or an industrial insured captive insurer may be:
 - 22 (a) Incorporated as a stock insurer with its capital divided into shares and held by
 23 the stockholders; or
 - 24 (b) Incorporated as a mutual insurer without capital stock, the governing body of
 25 which is elected by the member organizations of its consortium; or
 - 26 (c) Organized as a reciprocal insurer in accordance with Subtitle 27 of this
 27 chapter.

- 1 (3) A special purpose captive insurer may be:
- 2 (a) Incorporated as a stock corporation;
- 3 (b) Incorporated as a nonstock corporation;
- 4 (c) Formed as a limited liability company;
- 5 (d) Formed as a partnership;
- 6 (e) Formed as a limited partnership;
- 7 (f) Formed as a statutory trust; or
- 8 (g) Such other person approved by the commissioner~~executive director~~, other
- 9 than a natural person in his or her individual capacity.
- 10 (4) A sponsored captive insurer may be:
- 11 (a) Incorporated as a stock corporation;
- 12 (b) Incorporated as a nonstock corporation;
- 13 (c) Formed as a limited liability company;
- 14 (d) Formed as a partnership;
- 15 (e) Formed as a limited partnership; or
- 16 (f) Formed as a statutory trust.
- 17 (5) A risk retention group may take any form permitted under the Liability Risk
- 18 Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.
- 19 (6) A captive insurer incorporated or organized in Kentucky shall have not less than
- 20 three (3) incorporators or two (2) organizers.
- 21 (7) In the case of a captive insurer, the commissioner~~executive director~~ shall find, in
- 22 order to issue a certificate of authority, that the establishment and maintenance of
- 23 the proposed captive insurer will promote the general good of the state. In arriving
- 24 at such a finding, the commissioner~~executive director~~ shall consider:
- 25 (a) The character, reputation, financial standing, and purposes of the
- 26 incorporators or organizers;
- 27 (b) The character, reputation, financial responsibility, insurance experience, and

business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and

(c) Any other aspects the commissioner~~{executive-director}~~ deems advisable.

(8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.

(9) Captive insurance companies formed as corporations under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

(a) The commissioner~~{executive-director}~~ may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and

(b) The commissioner~~{executive-director}~~ may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner~~{executive-director}~~ may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the commissioner~~{executive-director}~~ may cancel the hearing.

(10) Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a

reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.

(11) In addition to the provisions of subsection (10) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.

(12) The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.

(13) The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

(14) Each owner of an agency captive insurer shall be licensed as an insurance producer.

➔Section 1611. KRS 304.49-070 is amended to read as follows:

(1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.

(2) On or before March 1 of each year, each captive insurer shall submit to the commissioner~~executive director~~ a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the commissioner~~executive director~~ approves the use of statutory accounting principles or international accounting standards, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner~~executive director~~ for the type of insurance and kinds of insurers to

1 be reported upon, and as supplemented by additional information required by the
 2 commissioner~~[executive director]~~. Any captive insurer whose use of statutory
 3 accounting principles is approved by the commissioner~~[executive director]~~ may
 4 make modifications and adaptations as are necessary to record as admitted the full
 5 value of all investments by the captive insurer permitted under this subtitle and,
 6 subject to the commissioner's~~[executive director's]~~ approval, to make its reports
 7 under this section consistent with the purposes of this subtitle. Except as otherwise
 8 provided, all captive insurers, with the exception of those formed as a risk retention
 9 group, shall file reports on a form prescribed by the commissioner~~[executive~~
 10 ~~director]~~ through administrative regulation. A captive insurer formed as a risk
 11 retention group shall file reports pursuant to KRS 304.2-205, with additional
 12 information or modification as the commissioner~~[executive director]~~ may prescribe.
 13 The commissioner~~[executive director]~~ shall by administrative regulation propose
 14 the forms in which captive insurers shall report.

15 (3) Any pure captive insurer or an industrial insured captive insurer insuring the risks of
 16 industrial insured groups as defined in KRS 304.49-010(9)(a) may make written
 17 application for filing the required report on a fiscal year end. If an alternative
 18 reporting date is granted, the annual report is due sixty (60) days after the fiscal year
 19 end.

20 (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the
 21 commissioner~~[executive director]~~ a copy of all reports and statements required to
 22 be filed under the laws of the jurisdiction in which the foreign captive insurer is
 23 formed, verified by oath of two (2) of its executive officers. If the
 24 commissioner~~[executive director]~~ is satisfied that the annual report filed by the
 25 foreign captive insurer in its domiciliary jurisdiction provides adequate information
 26 concerning the financial condition of the foreign captive insurer, the
 27 commissioner~~[executive director]~~ may waive the requirement for completion of the

1 captive annual statement for business written in the foreign jurisdiction.

2 ➔Section 1612. KRS 304.49-080 is amended to read as follows:

- 3 (1) Any insurer holding a certificate of authority issued under this subtitle shall be
 4 subject to provisions of KRS 304.2-210 to 304.2-300 and provisions of Subtitle 2 of
 5 this chapter for determining market conduct and business practices. However, the
 6 commissioner~~[executive director]~~ upon application, in his or her discretion, may
 7 extend the period between examinations, provided the captive insurer is subject to a
 8 comprehensive annual audit during that period, of a scope satisfactory to the
 9 commissioner~~[executive director]~~, by independent auditors approved by the
 10 commissioner~~[executive director]~~.

- 11 (2) The examination for a branch captive insurer shall be of branch business and branch
 12 operations only, as long as the branch captive insurer provides annually to the
 13 commissioner~~[executive director]~~ a certificate of compliance, or its equivalent,
 14 issued by or filed with the licensing authority of the jurisdiction in which the branch
 15 captive insurer is formed, and demonstrates to the commissioner's~~[executive~~
 16 ~~director's]~~ satisfaction that it is operating in sound financial condition in accordance
 17 with all applicable laws and regulations of that jurisdiction.

- 18 (3) As a condition for issuance of a certificate of authority to a branch captive insurer,
 19 the foreign captive insurer shall grant authority to the commissioner~~[executive~~
 20 ~~director]~~ for examination of the affairs of the foreign captive insurer in the
 21 jurisdiction in which the foreign captive insurer is formed.

22 ➔Section 1613. KRS 304.49-100 is amended to read as follows:

- 23 (1) A consortium captive insurer, sponsored captive insurer, and an industrial insured
 24 captive insurer insuring the risks of an industrial insured group defined in KRS
 25 304.49-010(9)(b) shall comply with the investment requirements contained in
 26 Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the
 27 commissioner~~[executive director]~~ may approve the use of alternative reliable

1 methods of valuation and rating.

2 (2) No pure captive insurer or industrial insured captive insurer insuring the risks of an
3 industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any
4 restrictions on allowable investments whatever, including those limitations
5 contained in Subtitle 7 of this chapter; provided, however, that the
6 commissioner~~[executive director]~~ may prohibit or limit any investment that
7 threatens the solvency or liquidity of any such company.

8 (3) Only a pure captive insurer may make loans to its parent company or affiliates. No
9 loans to a parent company or any affiliate shall be permitted without prior written
10 approval of the commissioner~~[executive director]~~ and shall be evidenced by a note
11 in a form approved by the commissioner~~[executive director]~~.

12 (4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.

13 ➔Section 1614. KRS 304.49-140 is amended to read as follows:

14 The commissioner~~[executive director]~~ may establish and from time to time amend
15 administrative regulations relating to captive insurance companies that are necessary to
16 enable the commissioner~~[executive director]~~ to carry out the provisions of KRS 304.49-
17 010 to 304.49-230.

18 ➔Section 1615. KRS 304.49-170 is amended to read as follows:

19 The commissioner~~[executive director]~~ shall promulgate administrative regulations
20 establishing standards to ensure that a parent or affiliated company is able to exercise
21 control of the risk management function of any controlled unaffiliated business to be
22 insured by the pure captive insurer.

23 ➔Section 1616. KRS 304.49-180 is amended to read as follows:

24 (1) A consortium captive insurer or industrial insured group formed as a stock or
25 mutual corporation may be converted to or merged with and into a reciprocal
26 insurer in accordance with a plan therefor and the provisions of this section.

27 (2) Any plan for such conversion or merger shall be fair and equitable to the

1 shareholders, in the case of a stock insurer, or the policyholders, in the case of a
 2 mutual insurer.

3 (3) In the case of a conversion authorized under subsection (1) of this section:

4 (a) The conversion shall be accomplished under any reasonable plan and
 5 procedure approved by the commissioner~~[executive director]~~, but the
 6 commissioner~~[executive director]~~ shall not approve any plan of conversion
 7 unless the plan:

- 8 1. Satisfies the provisions of subsection (2) of this section;
- 9 2. Provides for a hearing, of which notice has been given to the insurer, its
 10 directors, officers, and stockholders, in the case of a stock insurer, or
 11 policyholders, in the case of a mutual insurer, all of whom shall have the
 12 right to appear at the hearing, except that the commissioner~~[executive~~
 13 ~~director]~~ may waive or modify the requirements for the hearing,
 14 provided that if a notice of hearing is required, but no hearing is
 15 requested, the commissioner~~[executive director]~~ may cancel the hearing;
- 16 3. Provides for the conversion of existing stockholder or policyholder
 17 interests into subscriber interests in the resulting reciprocal insurer,
 18 proportionate to stockholder or policyholder interests in the stock or
 19 mutual insurer; and
- 20 4. Is approved:
 - 21 a. In the case of a stock insurer, by a majority of the shares entitled to
 22 vote represented in person or by proxy at a duly called regular or
 23 special meeting at which a quorum is present;
 - 24 b. In the case of a mutual insurer, by a majority of the voting interests
 25 of policyholders represented in person or by proxy at a duly called
 26 regular or special meeting at which a quorum is present;

27 (b) The commissioner~~[executive director]~~ shall approve the plan of conversion if

1 the commissioner~~[executive director]~~ finds that the conversion will promote
 2 the general good of the state in conformity with those standards set forth in
 3 KRS 304.49-060(7);

4 (c) If the commissioner~~[executive director]~~ approves the plan, the
 5 commissioner~~[executive director]~~ shall amend the converting insurer's
 6 certificate of authority to reflect conversion to a reciprocal insurer and issue an
 7 amended certificate of authority to the company's attorney-in-fact;

8 (d) Upon the issuance of an amended certificate of authority of a reciprocal
 9 insurer by the commissioner~~[executive director]~~, the conversion shall be
 10 effective; and

11 (e) Upon the effectiveness of the conversion, the corporate existence of the
 12 converting insurer shall cease and the resulting reciprocal insurer shall notify
 13 the Secretary of State of the conversion.

14 (4) A merger authorized under subsection (1) of this section shall be accomplished
 15 substantially in accordance with the procedures set forth in KRS 304.24-390, except
 16 that, solely for purposes of the merger:

17 (a) The plan of merger shall satisfy the provisions of subsection (2) of this
 18 section;

19 (b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent
 20 to the board of directors of a stock or mutual insurer;

21 (c) The subscribers of a reciprocal insurer shall be the equivalent of the
 22 policyholders of a mutual insurer;

23 (d) If a subscribers' advisory committee does not have a president or secretary, the
 24 officers of the committee having substantially equivalent duties shall be
 25 deemed the president or secretary of the committee;

26 (e) The commissioner~~[executive director]~~ may, upon request of an insurer party
 27 to a merger authorized under subsection (1) of this section, waive the

1 requirement of KRS 304.24-390(4);

2 (f) The commissioner~~[executive director]~~ shall approve the articles of merger if
 3 the commissioner~~[executive director]~~ finds that the merger will promote the
 4 general good of the state in conformity with those standards set forth in KRS
 5 304.49-060(7). If the commissioner~~[executive director]~~ approves the articles
 6 of merger, the commissioner~~[executive director]~~ shall indorse his or her
 7 approval thereon and the surviving insurer shall present and file them with the
 8 Secretary of State;

9 (g) Notwithstanding KRS 304.49-040, the commissioner~~[executive director]~~ may
 10 permit the formation, without surplus, of a captive insurer organized as a
 11 reciprocal insurer, into which an existing captive insurer may be merged for
 12 the purpose of facilitating a transaction under this section; however, there
 13 shall be no more than one (1) authorized insurer surviving the merger; and

14 (h) An alien insurer may be a party to a merger authorized under subsection (1) of
 15 this section, provided that the requirements for a merger between a domestic
 16 and a foreign insurer under KRS 304.24-390 shall apply to a merger between a
 17 domestic and an alien insurer under this subsection. The alien insurer shall be
 18 treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions
 19 shall be the equivalent of a state for purposes of KRS 304.24-390.

20 ➔Section 1617. KRS 304.49-190 is amended to read as follows:

21 (1) One (1) or more sponsors may form a sponsored captive insurer under KRS 304.49-
 22 010 to 304.49-230.

23 (2) A sponsored captive insurer formed or issued a certificate of authority under the
 24 provisions of KRS 304.49-010 to 304.49-230 may establish and maintain one (1) or
 25 more protected cells to insure risks of one (1) or more participants, subject to the
 26 following conditions:

27 (a) The shareholders of a sponsored captive insurer shall be limited to its

1 participants and sponsors;

2 (b) Each protected cell shall be accounted for separately on the books and records
3 of the sponsored captive insurer to reflect the financial condition and results of
4 operations of the protected cell, net income or loss, dividends, or other
5 distributions to participants, and any other factors provided in the participant
6 contract or required by the commissioner~~executive director~~;

7 (c) The assets of a protected cell shall not be chargeable with liabilities arising
8 out of any other insurance business the sponsored captive insurer may
9 conduct;

10 (d) No sale, exchange, or other transfer of assets may be made by the sponsored
11 captive insurer between or among any of its protected cells without the
12 consent of the protected cells;

13 (e) No sale, exchange, transfer of assets, dividend, or distribution may be made
14 from a protected cell to a sponsor or participant without the
15 commissioner's~~executive director's~~ approval and, in no event, shall such
16 approval be given if the sale, exchange, transfer, dividend, or distribution
17 would result in insolvency or impairment with respect to a protected cell;

18 (f) Each sponsored captive insurer shall annually file with the
19 commissioner~~executive director~~ those financial reports required by the
20 commissioner~~executive director~~, which shall include, without limitation,
21 accounting statements detailing the financial experience of each protected cell;

22 (g) Each sponsored captive insurer shall notify the commissioner~~executive~~
23 ~~director~~, in writing, within ten (10) business days, of any protected cell that is
24 insolvent or otherwise unable to meet its claim or expense obligations; and

25 (h) No participant contract shall take effect without the commissioner's~~executive~~
26 ~~director's~~ prior written approval, and the addition of each new protected cell
27 and withdrawal of any participant of any existing protected cell shall

1 constitute a change in the business plan requiring the
2 commissioner's~~executive director's~~ prior written approval.

3 ➔Section 1618. KRS 304.49-220 is amended to read as follows:

- 4 (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to
5 304.49-230 shall return to the Department of Revenue a statement under oath of all
6 premium receipts on business written by the captive insurer during the preceding
7 year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths
8 of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three-
9 tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and
10 two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000),
11 and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on
12 the direct premiums collected or contracted for on policies or contracts of insurance
13 written by the captive insurer during the year ending December 31 next preceding,
14 after deducting from the direct premiums subject to the tax the amounts paid to
15 policyholders as return premiums, which shall include dividends on unabsorbed
16 premiums or premium deposits returned or credited to policyholders.
- 17 (2) Every captive insurer holding a certificate of authority under KRS 304.49-010 to
18 304.49-230 shall return to the Department of Revenue a statement under oath of all
19 assumed reinsurance premium receipts during the preceding year and shall pay, on
20 or before March 1 in each year, a tax at the rate of two hundred twenty-five
21 thousandths of one percent (0.225%) on the first twenty million dollars
22 (\$20,000,000) of assumed reinsurance premiums, and one hundred fifty thousandths
23 of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and fifty
24 thousandths of one percent (0.050%) on the next twenty million dollars
25 (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar
26 thereafter. However, no reinsurance tax applies to premiums for risks or portions of
27 risks which are subject to taxation on a direct basis pursuant to subsection (1) of this

1 section. No reinsurance premium tax shall be payable in connection with the receipt
2 of assets in exchange for the assumption of loss reserves and other liabilities of
3 another insurer under common ownership and control if the transaction is part of a
4 plan to discontinue the operations of the other insurer, and if the intent of the parties
5 to the transaction is to renew or maintain the business with the captive insurer.

6 (3) If the aggregate taxes to be paid by a captive insurer calculated under subsections
7 (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any
8 year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such
9 year.

10 (4) Two (2) or more captive insurance companies under common ownership and
11 control shall be taxed as though they were a single captive insurer.

12 (5) For the purposes of this section, common ownership and control shall mean:

13 (a) In the case of stock corporations, the direct or indirect ownership of eighty
14 percent (80%) or more of the outstanding voting stock of two (2) or more
15 corporations by the same shareholder or shareholders; and

16 (b) In the case of mutual corporations, the direct or indirect ownership of eighty
17 percent (80%) or more of the surplus and the voting power of two (2) or more
18 corporations by the same member or members.

19 (6) In the case of a branch captive insurer, the tax provided for in this section shall
20 apply only to the branch business of the company.

21 (7) The tax provided for in this section shall constitute all taxes collectible under the
22 laws of Kentucky from any captive insurer, and the taxes imposed under this section
23 shall be in lieu of all excise, license, occupational, or other taxes imposed by the
24 state, county, city, or other taxing district except as provided in KRS 136.320(6) and
25 (7).

26 (8) The Kentucky Department of Revenue shall annually distribute ten percent (10%)
27 of the premium tax revenues collected pursuant to this section to the

1 **Department**~~[Office]~~ of Insurance for the regulation of captive insurance companies
2 under KRS 304.49-010 to 304.49-230.

3 ➔Section 1619. KRS 304.49-222 is amended to read as follows:

- 4 (1) A captive insurer shall engage a manager who is a resident of this state.
- 5 (2) The captive manager shall maintain the books and records of the captive insurer's
6 business, transactions, and affairs at a location that is in this state or shall make
7 them available to the **commissioner**~~[executive director]~~ at a location that is in this
8 state.
- 9 (3) The captive manager shall promptly notify the **commissioner**~~[executive director]~~ of
10 any failure of the captive insurer to comply with this section.
- 11 (4) The **commissioner**~~[executive director]~~ may require a captive insurer to discharge a
12 captive manager for failure to substantively fulfill the captive manager's duties
13 under this subtitle.

14 ➔Section 1620. KRS 304.49-224 is amended to read as follows:

15 The **commissioner**~~[executive director]~~ may promulgate administrative regulations to set
16 minimum standards for the formation, structure, examination, and operation of a special
17 purpose captive insurer or an agency captive insurer.

18 ➔Section 1621. KRS 304.49-226 is amended to read as follows:

- 19 (1) If there is any material change in the financial condition or management of a captive
20 insurer, the captive insurer shall notify the **commissioner**~~[executive director]~~, in
21 writing, within ten (10) business days of the change.
- 22 (2) No captive insurer shall voluntarily take any of the following material actions
23 without providing the **commissioner**~~[executive director]~~ at least thirty (30) days'
24 prior written notice and receiving the **commissioner's**~~[executive director's]~~ approval
25 of the action within the thirty (30) day period:
 - 26 (a) The dissolution of the captive insurer;
 - 27 (b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of,

- 1 or granting of a security interest in, all or substantially all of the assets of the
- 2 captive insurer;
- 3 (c) Any incurrence of material indebtedness by the captive insurer;
- 4 (d) Any making of a material loan or other material extension of credit by the
- 5 captive insurer;
- 6 (e) Any payment or distribution that materially reduces capital and surplus;
- 7 (f) Any merger or consolidation to which the captive insurer is a constituent
- 8 party;
- 9 (g) Any conversion of the captive insurer to another business form;
- 10 (h) Any transfer to or domestication in any jurisdiction by the captive insurer; or
- 11 (i) Any material amendment of the organizational documents of the captive
- 12 insurer.

13 ➔ Section 1622. KRS 304.49-228 is amended to read as follows:

14 A sponsored captive insurer may establish and maintain one (1) or more protected cells to
 15 insure risks of one (1) or more participants, subject to the following conditions:

- 16 (1) The owners of a sponsored captive insurer shall be limited to its participants and
- 17 sponsors, provided that a sponsored captive insurer may issue nonvoting securities
- 18 or interests to other persons on terms approved by the commissioner~~executive~~
- 19 ~~director~~];
- 20 (2) The assets of each protected cell shall be held and accounted for separately on the
- 21 books and records of the sponsored captive insurer to reflect the financial condition
- 22 and results of operations of the protected cell, net income or loss of the protected
- 23 cell, dividends or other distributions to participants of the protected cell, and other
- 24 factors regarding the protected cell as may be provided in the applicable participant
- 25 contract or required by the commissioner~~executive director~~];
- 26 (3) The assets of a protected cell shall not be chargeable with liabilities of any other
- 27 protected cell or, unless otherwise agreed in the applicable participant contract, of

- 1 the sponsored captive insurer generally;
- 2 (4) No sale or transfer of assets, or dividend or other distribution, may be made with
3 respect to a protected cell by such sponsored captive insurer without the consent of
4 the participants of each affected protected cell;
- 5 (5) No sale, exchange, or transfer of assets, or dividend or other distribution, other than
6 a payment to a sponsor in accordance with the applicable participant contract, may
7 be made with respect to a protected cell to a sponsor or a participant without the
8 commissioner's~~executive director's~~ approval;
- 9 (6) Each sponsored captive insurer shall annually file with the commissioner~~executive~~
10 ~~director~~ financial reports as the commissioner~~executive director~~ shall require,
11 which shall include, without limitation, accounting statements detailing the
12 financial experience of each protected cell;
- 13 (7) Each sponsored captive insurer shall notify the commissioner~~executive director~~,
14 in writing, within ten (10) business days of any protected cell that has become
15 insolvent or is otherwise unable to meet its claim or expense obligations;
- 16 (8) No participant contract shall take effect without the commissioner's~~executive~~
17 ~~director's~~ prior written approval. The addition of each new protected cell and
18 withdrawal of any participant or termination of any existing protected cell shall
19 constitute a change in the plan of operation of the sponsored captive insurer
20 requiring the commissioner's~~executive director's~~ prior written approval; and
- 21 (9) (a) The business written by a sponsored captive insurer, with respect to each
22 protected cell, shall be:
- 23 1. Fronted by an insurance company licensed under the laws of this state or
24 any other state;
 - 25 2. Reinsured by a reinsurer authorized or approved by this state;
 - 26 3. Secured by a trust fund in this state for the benefit of policyholders and
27 claimants; or

1 4. Funded by an irrevocable letter of credit or other arrangement that is
2 approved in writing by the commissioner~~[executive director]~~.

3 (b) The amount of security provided shall be no less than the reserves associated
4 with those liabilities which are neither fronted nor reinsured, including
5 reserves for losses, allocated loss adjustment expenses, incurred but not
6 reported losses, and unearned premiums for business written through the
7 protected cell.

8 (c) The commissioner~~[executive director]~~ may, for any reason, require the
9 sponsored captive insurance company to increase the funding of any security
10 arrangement established under this subsection in order to protect claimants or
11 potential claimants.

12 (d) If the form of security is a letter of credit, the letter of credit shall be
13 established, issued, or confirmed by a financial institution chartered by or
14 licensed or otherwise authorized to do banking business in this state, or by any
15 other financial institution approved by the commissioner~~[executive director]~~.

16 (e) A trust maintained pursuant to this subsection shall be established in a form
17 and upon such terms as approved by the commissioner~~[executive director]~~.

18 ➔Section 1623. KRS 304.49-230 is amended to read as follows:

19 This subtitle shall not apply to any foreign captive insurer lawfully transacting the
20 business of insurance in Kentucky prior to July 14, 2000, unless the foreign captive
21 insurer petitions the commissioner~~[executive director]~~ requesting that this subtitle be
22 applicable to the foreign captive insurer.

23 ➔Section 1624. KRS 304.50-010 is amended to read as follows:

24 (1) The commissioner~~[executive director]~~ may authorize twenty (20) or more
25 employers with common interests or membership in a bona fide trade association,
26 or two (2) or more governmental entities, to enter into agreements to pool their
27 liabilities under KRS Chapter 342 for the purpose of qualifying as a workers'

1 compensation self-insured group under this subtitle and KRS 342.350.

2 (2) The commissioner~~[executive director]~~ shall promulgate administrative regulations
3 as necessary to govern admission, certification, and regulation of workers'
4 compensation self-insured groups as authorized by this section and KRS 342.350.

5 The commissioner~~[executive director]~~ shall take any and all action necessary to
6 effectuate the provisions of this subtitle. The commissioner~~[executive director]~~
7 shall be responsible for maintaining records obtained or prepared in association
8 with this oversight.

9 (3) The Governor may assign the regulatory authority under this subtitle to another
10 board or agency pursuant to KRS 12.028.

11 (4) Except as specifically provided in this subtitle, no other provision of this chapter
12 shall apply to a workers' compensation self-insured group.

13 ➔Section 1625. KRS 304.50-015 is amended to read as follows:

14 As used in this subtitle, unless the context requires otherwise:

15 (1) "Adjuster" means any person required to be licensed as an adjuster under Subtitle 9
16 of this chapter, who for a fee or compensation investigates or settles claims arising
17 under contracts issued by a workers' compensation self-insured group on behalf of
18 either the group member or the group.

19 (2) "Administrator" means an individual or legal entity engaged by a self-insured
20 group's board of trustees to carry out the policies established by the self-insured
21 group's board of trustees and provide day-to-day management of the self-insured
22 group.

23 (3) "Agent" means an individual or business entity required to be licensed by the
24 Department~~[Office]~~ of Insurance under Subtitle 9 of this chapter, to sell or solicit
25 applications for insurance or to negotiate insurance contracts.

26 (4) "Aggregate excess insurance" means insurance which provides that the excess
27 insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on

- 1 claims incurred during a policy period in excess of the retention amount to the
2 excess insurer's limit of liability.
- 3 (5) "Assessment" means a levy made on members of the group to fund deficiencies.
- 4 (6) "Bona fide trade association" means an association of employers created for a
5 noninsurance trade purpose and which has been operating in the Commonwealth for
6 at least two (2) years prior to its sponsorship of a self-insured group.
- 7 (7) "Certificate of filing" means the certificate issued to a workers' compensation self-
8 insured group to indicate that it has complied with the provisions of this subtitle
9 which are prerequisites to its operation.
- 10 (8) "Common interests" means employers that are engaged in similar activities, share
11 common standard industrial classification codes and common risk factors.
- 12 (9) "Consultant" means an individual, required to be licensed under Subtitle 9 of this
13 chapter, who as an independent contractor in relation to his or her client, for fee or
14 compensation other than from a workers' compensation self-insured group, in any
15 manner advises or purports to advise any person actually or prospectively a member
16 of such a group concerning coverage, advisability, rights, or interests under the
17 contract or relative to the retention, exchange, surrender, or exercise of rights
18 thereunder.
- 19 (10) "Coverage form" means coverage contract forms, endorsements, applications,
20 indemnity agreements, clauses, riders, and all other documents regarding coverage.
- 21 (11) "Deficiency" means that the self-insured group's assets are insufficient to enable the
22 group to discharge its legal liabilities and other obligations and maintain the
23 reserves required under this subtitle, or that the group has a negative members' fund
24 balance.
- 25 (12) "Deficit" means the amount of any deficiency in the self-insured group or group
26 self-insurance fund.
- 27 (13) "Dividends" means disbursements from surplus funds to group members in

1 accordance with a plan filed with, and approved by, the commissioner~~executive~~
2 ~~director~~].

3 (14) "Earned premium" means the prorated portion of the full, actual premium charged
4 to the group members that is applicable to the group's accounting period or fiscal
5 year.

6 (15) "Employee" means those persons covered under the provisions of KRS 342.640 and
7 those persons voluntarily covered under KRS 342.660.

8 (16) "Employer" means an employer mandatorily subject to and required to comply with
9 the provisions of KRS Chapter 342, and those voluntarily covering excluded
10 employees pursuant to KRS 342.660.

11 (17) "Commissioner~~Executive director~~" means the commissioner~~executive director~~
12 of the Kentucky Department~~Office~~ of Insurance.

13 (18) "Fiscal agent" means a person or legal entity, other than a service organization or
14 employees or agents of a service organization, designated by the trustees to receive,
15 invest, and disburse the self-insured group's funds.

16 (19) "Forms" means coverage contract forms, endorsements, applications, indemnity
17 agreements, clauses, riders, articles of association, articles of incorporation, trust
18 agreements or bylaws of the proposed group, and all other documents regarding
19 coverage and membership.

20 (20) "Governmental entities" means cities, counties, urban-county governments, charter
21 county governments, consolidated local governments, school districts, and other
22 political subdivisions of the Commonwealth, and their boards, agencies, authorities,
23 and commissions.

24 (21) "Group members" means employers who have joined a self-insured group.

25 (22) "Group self-insurance fund" means the contractual arrangement whereby twenty
26 (20) or more employers with common interests or two (2) or more governmental
27 entities associate to jointly self-insure their workers' compensation liability.

- 1 (23) "Insolvent" or "insolvency" means the inability of a self-insured group to pay its
 2 outstanding lawful obligations as they mature in the regular course of business, or to
 3 hold sufficient assets to prospectively pay all incurred workers' compensation
 4 benefits when due.
- 5 (24) "Insurance producer" means an individual or business entity required to be licensed
 6 under Subtitle 9 of this chapter to sell, solicit, or negotiate insurance. "Insurance
 7 producer" includes agent, consultant, managing general agent, surplus lines broker,
 8 reinsurance intermediary broker and manager, and, for a workers' compensation
 9 self-insured group, a third-party administrator.
- 10 (25) "Person" includes, but is not limited to, any individual, partnership, association,
 11 limited liability company, trust, or corporation.
- 12 (26) "Premium" means the amount of money charged each member of the self-insured
 13 group to fund the obligations and expenses of the self-insured group.
- 14 (27) "Qualified actuary" means an associate or fellow of the Casualty Actuarial Society.
- 15 (28) "Rate" means the expected value of the future cost of insurance per exposure unit
 16 which accounts for the treatment of losses, expenses, and profit prior to any
 17 application of individual risk variations based on loss or expense considerations, but
 18 does not include minimum premium.
- 19 (29) "Self-insured group" means a group self-insurance fund.
- 20 (30) "Self-insurance year" means the annual period of certification of the self-insured
 21 group authorized under KRS 304.50-010 and 342.350.
- 22 (31) "Service organization" means a person or entity that provides services to a self-
 23 insured group and includes claims adjustment, safety engineering, statistical
 24 compilation, preparation of premium charges, loss and tax reports or other reports
 25 required by the commissioner~~[executive director]~~, administration of the self-insured
 26 group, marketing services, placement of excess insurance, development of member
 27 payroll audits, administration of investments, or legal assistance.

1 (32) "Specific excess insurance" means an insurance policy which insures the amount of
 2 a claim from one (1) occurrence involving one (1) or more employees or employers
 3 in the same occurrence or incident of exposure in excess of a specified dollar
 4 amount to a stated limit.

5 (33) "Supplementary rating information" means any manual or plan of rates,
 6 classification, rating schedule, minimum premium, policy fees, rating rules, or any
 7 similar information needed to determine the applicable rate or premium. This shall
 8 include underwriting rules, but only to the extent necessary to determine the rate or
 9 premium that will be applicable to a risk should the self-insured group decide to
 10 provide coverage. This does not include guidelines that relate to the selection of
 11 those risks that are acceptable to a workers' compensation self-insured group.

12 (34) "Supporting information" means the experience and judgment of the filer and the
 13 experience or data of other insurers or organizations relied on by the filer, the
 14 interpretation of any other data relied on by the filer, descriptions of methods used
 15 in making the rates, and any other information required by the
 16 commissioner~~executive director~~.

17 (35) "Surplus funds" means the excess of the self-insured group's assets over its
 18 liabilities.

19 (36) "Trustees" means persons elected by the group members or appointed by the board
 20 of directors of the sponsoring trade association or association of governmental
 21 entities to oversee the administration of the self-insured group.

22 ➔ Section 1626. KRS 304.50-020 is amended to read as follows:

23 The provisions of this subtitle apply to a group or bona fide trade association of
 24 employers subject to the provisions of KRS Chapter 342, which may include employers
 25 voluntarily complying with the provisions of KRS Chapter 342, who join together to self-
 26 insure against workers' compensation risks. Any workers' compensation self-insured
 27 group operating under a certificate of filing as of March 1, 2005, shall have one (1) year

1 from that date to comply with the provisions of this subtitle, to the extent that these
 2 provisions differ from prior requirements in KRS Chapter 342 and the administrative
 3 regulations promulgated thereunder. Extensions of time may be granted for good cause
 4 shown at the discretion of the commissioner~~[executive director]~~.

5 ➔Section 1627. KRS 304.50-025 is amended to read as follows:

6 (1) Except for an activity arising in the creation of a workers' compensation self-
 7 insured group, a person or entity shall not issue a binder or certificate of insurance
 8 for workers' compensation coverage unless the workers' compensation self-insured
 9 group has been certified to do so by the commissioner~~[executive director]~~. A
 10 certification issued by the commissioner~~[executive director]~~ shall remain in effect
 11 until revoked or modified by the commissioner~~[executive director]~~ in accordance
 12 with KRS 304.50-140.

13 (2) All certificates of filing issued by the commissioner~~[executive director]~~ of the
 14 Department~~[Office]~~ of Workers' Claims prior to March 1, 2005, shall remain in full
 15 force and effect, unless revoked or suspended by the commissioner~~[executive director]~~
 16 ~~director]~~ in accordance with KRS 304.50-140. The commissioner~~[executive director]~~
 17 ~~director]~~ shall issue replacement certificates of filing within thirty (30) days of
 18 March 1, 2005.

19 ➔Section 1628. KRS 304.50-030 is amended to read as follows:

20 (1) A proposed workers' compensation self-insured group seeking initial certification
 21 shall file with the commissioner~~[executive director]~~ an application for a certificate
 22 of filing accompanied by a nonrefundable filing fee of six hundred dollars (\$600).
 23 An application for initial certification as a workers' compensation self-insured group
 24 shall be filed on a form approved by the commissioner~~[executive director]~~ by:

25 (a) A group of twenty (20) or more employers having common interests or
 26 membership in a bona fide trade association. Any group member having more
 27 than fifty percent (50%) common ownership shall constitute one (1) group

1 member; or

2 (b) Two (2) or more governmental entities.

3 (2) Each initial application shall set forth or be accompanied by:

4 (a) The self-insured group's name, location of its principal office, date of
5 organization, name and address of each group member, if known at the time
6 of application, or if unknown, a description of the members to be solicited for
7 membership, and identification of its fiscal year;

8 (b) A copy of the articles of association, articles of incorporation, trust agreement,
9 or bylaws of the proposed self-insured group, including a description of the
10 time and method by which premiums shall be determined, assessed, and
11 collected during regular operations and in the event of insolvency of the self-
12 insured group;

13 (c) A copy of any agreements with an administrator, service organization, and
14 fiscal agent, including third-party administrators and consultants;

15 (d) A copy of the agreement between the self-insured group and each member
16 jointly and severally binding the group and each member of the group to
17 comply with the provisions of this subtitle and the decisions of the trustees
18 relating to the operation of the self-insured group;

19 (e) A description of the group members' common interests or a description of the
20 bona fide trade association, including date of organization, articles of
21 incorporation, and a history of the association's activities;

22 (f) The managed care and utilization review plans, if any, established under KRS
23 Chapter 342 for the self-insured group;

24 (g) A copy of each instrument by which the self-insured group or its agent or
25 consultant has made a commitment to pay for a past or future good or service;

26 (h) Identification by name, address, and term of the initial board of trustees,
27 administrator, and service organization together with an attested statement that

- 1 a pecuniary or personal conflict does not exist between the official duties of
 2 the trustees, administrators, and service organizations and the interests of the
 3 members;
- 4 (i) The name of the custodian and the address where the self-insured group's
 5 books and records will be kept;
- 6 (j) Specimen of the proposed policy and certificate of insurance for the specific
 7 and aggregate excess coverage, clearly stating any deductible or retention
 8 amount;
- 9 (k) Copies of security deposits and fidelity bonds required under this subtitle;
- 10 (l) A proposed schedule of projected annual premium rates and any factor or plan
 11 by which rates may be modified. Experience modification factors shall be
 12 calculated according to the rules of the advisory organization designated by
 13 the commissioner~~executive director~~ in accordance with Subtitle 13 of this
 14 chapter;
- 15 (m) Financial statements for initial group members audited by a certified public
 16 accountant, and signed by an owner or officer of each member, demonstrating
 17 a combined net worth of not less than ten million dollars (\$10,000,000) for the
 18 group, except for governmental entities, and the financial condition of each
 19 member;
- 20 (n) A feasibility study prepared by a qualified actuary demonstrating the overall
 21 adequacy and soundness of the proposed plan of operation for the self-insured
 22 group; and
- 23 (o) A three (3) year financial projection including income statements, balance
 24 sheets, statements of cash flow, and all material assumptions relating to the
 25 financial projection for the self-insured group.
- 26 (3) (a) Except as provided in paragraph (b) of this subsection, the premium of one (1)
 27 group member shall not exceed twenty percent (20%) of the estimated total

1 premium for the workers' compensation self-insured group.

2 (b) If the group consists of two (2) or more governmental entities, the premium of
3 one (1) group member shall not exceed sixty percent (60%) of the estimated
4 total premium for the self-insured group.

5 (4) The first year's premium for the initial certification of the self-insured group shall
6 not be less than one million dollars (\$1,000,000). Verification shall be presented
7 that twenty-five percent (25%) of the initial estimated premium has been paid and
8 deposited with the self-insured group's fiscal agent.

9 (5) The initial application shall be filed a minimum of ninety (90) days prior to the
10 proposed inception date of the self-insured group.

11 ➔Section 1629. KRS 304.50-035 is amended to read as follows:

12 Certification as a workers' compensation self-insured group shall be granted only if the
13 commissioner~~executive director~~ finds that the applicant has complied with the
14 provisions of this subtitle, paid the application fee, and met the following conditions:

15 (1) All persons responsible for the conduct of the affairs of the workers' compensation
16 self-insured group are financially stable and experienced in the administration of a
17 workers' compensation self-insured group;

18 (2) The workers' compensation self-insured group is financially responsible and has
19 demonstrated the ability to meet all of its obligations to participants and prospective
20 participants and injured workers as required in KRS Chapter 342. In making this
21 determination, the commissioner~~executive director~~ may consider:

22 (a) The adequacy of working capital; and

23 (b) The applicant's compliance with all requirements of this subtitle, including
24 but not limited to:

25 1. The adequacy of the funding mechanisms;

26 2. The existence and adequacy of appropriate excess insurance;

27 3. The participating members' financial strength;

- 1 4. The stability of the membership;
- 2 5. The risks of the industry;
- 3 6. The experience of management and all persons responsible for the
- 4 conduct of the affairs of the workers' compensation self-insured group;
- 5 and
- 6 7. An initial and ongoing minimum surplus funds requirement of not less
- 7 than one million dollars (\$1,000,000), except for a workers'
- 8 compensation self insured group currently operating under a plan
- 9 approved by the commissioner~~[executive-director]~~ pursuant to KRS
- 10 304.50-135 or a remedial action plan approved by the predecessor
- 11 regulatory agency prior to August 3, 2004.

12 ➔Section 1630. KRS 304.50-040 is amended to read as follows:

- 13 (1) A certificate of filing shall remain in effect until terminated at the request of the
- 14 self-insured group or suspended or revoked by the commissioner~~[executive~~
- 15 ~~director]~~ in accordance with the provisions of this subtitle.
- 16 (2) The commissioner~~[executive-director]~~ shall not grant the request of a workers'
- 17 compensation self-insured group to terminate its certificate of filing unless the
- 18 group has filed with the commissioner~~[executive-director]~~ a statement describing
- 19 arrangements that have been made to pay obligations of the group, including both
- 20 known claims and expenses and incurred but not reported claims and expenses.
- 21 (3) Subject to the approval of the commissioner~~[executive-director]~~, a workers'
- 22 compensation self-insured group may merge with another workers' compensation
- 23 self-insured group. As a result of any merger, the resulting workers' compensation
- 24 self-insured group shall assume in full all obligations of the constituent groups.

25 ➔Section 1631. KRS 304.50-045 is amended to read as follows:

- 26 (1) To obtain and maintain a certificate of filing, a workers' compensation self-insured
- 27 group shall have sufficient financial strength to pay all benefits for compensation

1 required by KRS Chapter 342 for risks covered by the group, including known
2 claims and expenses and incurred but not reported claims and expenses.

3 (2) (a) The trustees and administrators shall provide a fidelity bond to the
4 commissioner~~[executive-director]~~ in the amount of not less than three
5 hundred thousand dollars (\$300,000), which may be subject to a deductible
6 not exceeding ten thousand dollars (\$10,000), for each trustee, each
7 administrator and the administrator's employees.

8 (b) The fiscal agent shall provide a fidelity bond to the trustees of not less than
9 fifty percent (50%) or one million dollars (\$1,000,000), whichever is lower, of
10 the funds to be handled by the fiscal agent. This requirement shall be waived
11 if the fiscal agent is a national bank.

12 (c) The service organization shall provide a fidelity bond to the trustees of not
13 less than two (2) times the amount of the revolving fund.

14 (d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this
15 subsection, the trustees may secure a fidelity blanket bond in an amount not
16 less than fifty percent (50%) of the self-insured group's premium or two
17 million dollars (\$2,000,000), whichever is lower. The fidelity blanket bond
18 shall include the trustees, the administrator, the service organization,
19 personnel of the service organization, and the fiscal agent, unless the fiscal
20 agent is a national bank.

21 ➔Section 1632. KRS 304.50-050 is amended to read as follows:

22 (1) The group shall provide security deposits to the commissioner~~[executive-director]~~
23 on a form prescribed by the commissioner~~[executive-director]~~ in an amount not less
24 than two hundred fifty thousand dollars (\$250,000), ten percent (10%) of the annual
25 premium, or ten percent (10%) of the reserve requirement as established in the most
26 recent audited statement of financial condition on file with the
27 commissioner~~[executive-director]~~, whichever is greater.

1 (2) The trustees may file cash, cash equivalents, or United States Treasuries as security
 2 deposit or a bank letter of credit on a form or forms prescribed by the
 3 commissioner~~[executive director]~~, in satisfaction of the security deposit
 4 requirement. Notwithstanding any other provision of law to the contrary, the deposit
 5 required under this section shall be under trust agreements to which depositories, a
 6 self-insured group, and the commissioner~~[executive director]~~ are parties. The
 7 commissioner~~[executive director]~~ may at any time inventory assets on deposit for
 8 any self-insured group. Assets shall not be removed or deposited in or from the
 9 bank or trust company in which the assets are deposited, except upon a written
 10 order, approved by the commissioner~~[executive director]~~, of at least two (2) officers
 11 authorized for such purpose by the workers' compensation group self-insurance
 12 fund's board of directors or other governing body, except that assets may be
 13 deposited or removed under the direction and upon the order of a court of
 14 competent jurisdiction, and in the presence of the commissioner~~[executive~~
 15 ~~director]~~. Deposit assets shall be valued at market.

16 (3) (a) Unless a fund fails to cure a deficiency, is insolvent, subject to a delinquency
 17 proceeding, or is in default as to taxes or other charges due under state law, a
 18 group self-insurance fund shall be entitled:

- 19 1. To collect and receive interest, dividends, and payments accruing upon
 20 assets held on deposit for its account.
- 21 2. From time to time, to exchange and substitute for any such assets, other
 22 assets eligible for deposits.

23 (b) If the group self-insurance fund fails to cure a deficiency when required, is
 24 insolvent, subject to delinquency proceedings, or is in default as to taxes or
 25 other charges due to the Commonwealth under law, the
 26 commissioner~~[executive director]~~ shall collect such interest, dividends, and
 27 payments and add them to the group self-insurance fund's deposit.

1 (4) (a) Any required deposit shall be released, in addition to circumstances already
2 provided for in the following instances only:

- 3 1. Upon extinguishment of substantially all liabilities of the group self-
4 insurance fund for the security for which the deposit is held;
- 5 2. If the deposit is no longer required under this subtitle; or
- 6 3. Upon proper order of a court of competent jurisdiction, the deposit shall
7 be released to the receiver, conservator, rehabilitator, or liquidator of the
8 group self-insurance fund.

9 (b) No release of a deposit shall be made except on application to and written
10 order of the commissioner~~[executive-director]~~ made upon proof satisfactory to
11 the commissioner~~[executive-director]~~ of the existence of one (1) of the
12 grounds required in paragraph (a) of this subsection. The
13 commissioner~~[executive-director]~~ shall not have any personal liability for any
14 such release of any deposit or part thereof so ordered by the
15 commissioner~~[executive-director]~~ in good faith.

16 (5) (a) A proposed custodian bank or trust company for security deposits shall be
17 approved by the commissioner~~[executive-director]~~ and shall be under a
18 custodial agreement approved by the commissioner~~[executive-director]~~.

19 (b) An approved custodian bank or trust company shall possess the following
20 qualifications:

- 21 1. The custodian bank or trust company's custodial functions for the self-
22 insured group shall be carried out under its trust department;
- 23 2. The custodian bank or trust company shall be audited annually by
24 independent certified public accountants, and the audit report, related
25 financial statements, and report on internal controls shall be available to
26 the self-insured group and the commissioner~~[executive-director]~~;
- 27 3. The custodian bank or trust company shall be organized under the laws

1 recognizing that the custodied securities are special deposits rather than
 2 general deposits, remain the specific property of the self-insured group,
 3 and are not subject to any creditor relationship of the custodian bank or
 4 trust company;

5 4. The custodian bank or trust company shall maintain blanket coverage
 6 relating to its custodial functions with limits to or exceeding those
 7 suggested by the American Bankers Association;

8 5. The custodian bank or trust company's capital and surplus shall equal or
 9 exceed twenty-five million dollars (\$25,000,000) unless it is licensed
 10 and regulated by the Commonwealth of Kentucky, in which case its
 11 capital and surplus shall equal or exceed ten million dollars
 12 (\$10,000,000); and

13 6. The custodian bank or trust company has demonstrated sufficient
 14 experience in handling custodial accounts.

15 (6) The commissioner~~[executive director]~~ shall publish a list of banks or trust
 16 companies for the security deposits or letter of credit as proposed by the group self-
 17 insurance fund.

18 ➔Section 1633. KRS 304.50-055 is amended to read as follows:

19 (1) A workers' compensation self-insured group shall establish plans for premium
 20 payment, determination and collection of assessments, and for declaration and
 21 payment of dividends or other disbursements, which shall be filed for prior approval
 22 with the commissioner~~[executive director]~~. Any change in the plans for premium
 23 payment, assessments, or dividends shall be filed for prior approval with the
 24 commissioner~~[executive director]~~. Approval of plans for assessments and dividends
 25 does not constitute approval of any particular assessment or dividend by the
 26 commissioner~~[executive director]~~.

27 (2) Prior to the inception of each group member's self-insurance year, the trustees shall

1 collect from that member at least twenty-five percent (25%) of the estimated
 2 premium for the ensuing year, except that in the case of a self-insured group formed
 3 by governmental entities twenty-five percent (25%) of the estimated premium for
 4 the ensuing year shall be collected no later than thirty (30) days after the beginning
 5 of the self-insured group's self-insurance year. The balance of the estimated
 6 premium shall be collected in either quarterly or monthly installments as set forth in
 7 the enabling documents described in KRS 304.50-030(2)(b) or 304.50-060(2)(b).
 8 Each group member's payroll shall be audited annually and an adjustment to
 9 premium shall be made accordingly.

10 (3) A disbursement from a workers' compensation self-insured group fund shall be for a
 11 purpose related to the self-insured group. A dividend shall not be approved or paid
 12 until at least thirty-six (36) months after the expiration of the self-insurance year
 13 and shall be paid from surplus funds not required for payment of claims or other
 14 liabilities. The dividends shall be paid or credited to members according to the
 15 reasonable classifications the trustees may establish. A dividend shall not be paid
 16 which unfairly discriminates between members of the same classifications. A
 17 dividend plan shall specify whether past group members are eligible for the
 18 dividend. Payment of a dividend under a dividend plan shall not be made unless the
 19 self-insured group has notified the commissioner~~executive director~~ of its intent to
 20 make a dividend payment at least thirty (30) days prior to the payment, and the
 21 commissioner~~executive director~~ has not disapproved the payment within that
 22 time.

23 (4) The formula to be used for collection of assessments shall be determined by the
 24 trustees and approved by the commissioner~~executive director~~. Assessments shall
 25 be fair and equitable and shall not unfairly discriminate between members of the
 26 same classification.

27 (5) A trustee, fiscal agent, or service organization shall not utilize an asset of the self-

insured group for a purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.

(6) The trustees may invest funds in:

- (a) United States Government bonds, United States Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government or its agencies;
- (b) Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor;
- (c) Obligations issued by a county, district, municipality, or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor;
- (d) Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
- (e) Certificates of deposit if issued by a duly chartered commercial bank;
- (f) At the time of purchase, equity securities actively traded on the New York or NASDAQ Stock Exchanges or other registered national securities exchanges with no individual equity holding comprising greater than ten percent (10%) of the equity portion of the portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner~~[executive director]~~.

- 1. An investment in an individual equity holding shall not represent at the time of purchase more than five percent (5%) of the total market value of the security.
- 2. At the time of purchase, investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the self-insured group reflected on the most recent quarterly

or annual statement of financial condition on file with the
commissioner~~[executive director]~~;

(g) Corporate bonds if:

1. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;
2. At the time of purchase, the corporate bond investments do not exceed twenty-five percent (25%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner~~[executive director]~~; and
3. The bond has a minimum rating of "A" by Standard and Poor; and

(h) At the time of purchase, mutual funds and exchange traded funds if the investments do not exceed twenty percent (20%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the commissioner~~[executive director]~~.

(7) Of the aggregate investments made by the trustees of the self-insured group under this section:

- (a) Not less than fifty percent (50%) of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in subsection (6)(a) to (e) of this section; and
- (b) A minimum of five percent (5%) of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.

(8) The commissioner~~[executive director]~~ may permit variation from the requirements

1 of this section for good cause.

2 ➔Section 1634. KRS 304.50-060 is amended to read as follows:

3 (1) The information and reports required by this section shall be filed by the self-
4 insured group with the commissioner~~[executive director]~~ on an annual basis.

5 (2) Within one hundred twenty (120) days from the end of the self-insured group's
6 fiscal year, the self-insured group shall file:

7 (a) Copies of all fidelity bonds, security deposits, and letters of credit;

8 (b) Any material change in the administration of the group, including any change
9 in the organizational documents, change in the administrator, or a change in
10 the service organization or fiscal agent;

11 (c) An attested statement relating to conflicts of interest and compliance with
12 KRS 304.50-105; and

13 (d) Any other information the commissioner~~[executive director]~~ may require.

14 (3) Within ten (10) days before the expiration of each self-insurance year, the self-
15 insured group shall file proof of:

16 (a) Specific excess insurance coverage for the ensuing year; and

17 (b) Aggregate excess insurance coverage for the ensuing year unless such
18 coverage is exempted or waived under KRS 304.50-120(1).

19 (4) Within one hundred twenty (120) days from the end of the self-insured group's
20 fiscal year, the group shall file the statement of financial condition required by KRS
21 304.50-110 and any other relevant financial information requested by the
22 commissioner~~[executive director]~~. Within forty-five (45) days from the end of each
23 fiscal quarter, the self-insured group shall file a statement of financial condition
24 along with an acknowledgment signed by the board of trustees or its authorized
25 agent indicating that the statement has been presented to the board and any other
26 relevant financial information requested by the commissioner~~[executive director]~~,
27 including a balance sheet, and income and cash flow statement, on a form

1 prescribed by the commissioner~~[executive director]~~.

2 (5) Upon the request of a group member, a self-insured group shall make available the
3 statement of financial condition required in KRS 304.50-110.

4 ➔Section 1635. KRS 304.50-065 is amended to read as follows:

5 A workers' compensation self-insured group shall notify the commissioner~~[executive~~
6 ~~director]~~ immediately of any material change in the information required to be filed under
7 this subtitle or in the manner of its compliance with KRS Chapter 342.

8 ➔Section 1636. KRS 304.50-075 is amended to read as follows:

9 The commissioner~~[executive director]~~ or his or her designee shall have power to examine
10 the financial condition, affairs, and management of any workers' compensation self-
11 insured group subject to the provisions of this subtitle. He or she shall have free access to
12 all the books, papers, and documents relating to the business of the organization, and may
13 summon witnesses and administer oaths and affirmations in the examination of the
14 directors, trustees, officers, agents, representatives, or employees of any group, or any
15 person in relation to the workers' compensation self-insured group's affairs, transactions,
16 or conditions relating to workers' compensation. The commissioner~~[executive director]~~
17 shall examine each workers' compensation self-insured group not less frequently than
18 every four (4) years. Information and other data obtained through the examination shall
19 be subject to the provisions of KRS 304.2-230 to 304.2-290. All examination expenses
20 shall be borne by the self-insured group being examined.

21 ➔Section 1637. KRS 304.50-085 is amended to read as follows:

22 (1) Each self-insured group shall be operated by a board of trustees. Except for a self-
23 insured group formed by governmental entities, the board of trustees for each self-
24 insured group shall consist of at least two (2) but not more than twenty (20) persons
25 selected in the manner prescribed in the bylaws of the self-insured group or other
26 laws of the Commonwealth.

27 (2) The board of trustees shall:

- 1 (a) Be residents of Kentucky or officers of corporations authorized to do business
- 2 in Kentucky;
- 3 (b) Administer the operations of the workers' compensation self-insured group
- 4 ensuring that there is adequate funding to pay compensation required by KRS
- 5 Chapter 342, that all claims are paid promptly and processed to conclusion,
- 6 and that all necessary precautions are taken to safeguard the assets of the
- 7 group;
- 8 (c) Maintain responsibility for all moneys collected or disbursed from the group;
- 9 (d) Maintain minutes of its meetings and make the minutes available to the
- 10 commissioner~~executive director~~ and group members;
- 11 (e) Designate an administrator to carry out the policies established by the board of
- 12 trustees and to provide day-to-day management of the self-insured group;
- 13 (f) Develop rates and collect premium and assessments; and
- 14 (g) Invest the self-insured group's funds.
- 15 (3) The board of trustees shall not:
- 16 (a) Extend credit to individual group members for payment of premiums or
- 17 assessments, except in accordance with payment plans filed with the
- 18 commissioner~~executive director~~;
- 19 (b) Permit the loan of any moneys to or borrow any moneys from the self-insured
- 20 group or in the name of the group, except that a workers' compensation self-
- 21 insured group formed by governmental entities may borrow moneys in the
- 22 name of the group; or
- 23 (c) Have a direct or indirect pecuniary interest in a service organization.
- 24 (4) (a) The trustees may contract with a service organization, an administrator, or a
- 25 fiscal agent to carry out the administration of the workers' compensation self-
- 26 insured group.
- 27 (b) A service organization and its employees and agents shall be duly licensed to

1 perform those functions for which a license is required under Kentucky law.

2 (c) A revolving fund of not more than twenty percent (20%) of estimated
3 premiums may be established for use by a service organization for the
4 payment of claims.

5 (5) In its discretion, the workers' compensation self-insured group may refer to its
6 trustees as directors. If this is done, the provisions of this subtitle referring to
7 trustees shall be construed as referring to directors.

8 ➔Section 1638. KRS 304.50-090 is amended to read as follows:

9 (1) An employer joining a workers' compensation self-insured group after the group
10 has been issued a certificate of filing shall submit an application for membership to
11 the board of trustees or its administrator and enter into an indemnity agreement.
12 Membership shall not take effect earlier than each member's date of application.
13 The application for membership and its approval shall be maintained as permanent
14 records of the board of trustees. The board of trustees shall require each member to
15 execute a joint and several liability agreement, or other annual ratification or
16 affirmation of indemnity, upon each renewal.

17 (2) The self-insured group shall be considered an individual employer for all purposes
18 of taxation and the individual members of the group shall not be exposed to tax
19 liability other than liability existing as a result of the indemnity agreement with the
20 other group members and the self-insured group.

21 (3) At the discretion of the trustees, the self-insured group may include the Kentucky
22 employees of foreign (out-of-state) employers.

23 (4) Individual members of a workers' compensation self-insured group shall be subject
24 to expulsion, nonrenewal, or cancellation by the group by giving the member and
25 the commissioner~~[executive director]~~ of the Department~~[Office]~~ of Workers'
26 Claims thirty (30) days advance notice. Such expulsion, nonrenewal, or cancellation
27 shall be executed in accordance with the bylaws of the group and for reasons

1 including but not limited to:

2 (a) Adverse claims experience;

3 (b) Lack of cooperation with safety and loss prevention policies; or

4 (c) Failure to report payroll in accordance with the rules and rating plan of the
5 self-insured group.

6 (5) At least thirty (30) days prior to the due date, the trustees shall notify each group
7 member of all premiums due, including adjustments. Failure by a member to pay
8 the premium or assessments due prior to the due date may result in immediate
9 cancellation from the group by the trustees. Ten (10) days advance notice of such
10 cancellation shall be given to the member and the commissioner~~[executive director]~~
11 of the Department~~[Office]~~ of Workers' Claims.

12 (6) Individual group members may elect to withdraw from the group only upon sixty
13 (60) days written notice to the commissioner~~[executive director]~~ of the
14 Department~~[Office]~~ of Workers' Claims and the trustees.

15 (7) The trustees shall report to the commissioner~~[executive director]~~ any person who
16 behaves fraudulently as described in Subtitle 47 of this chapter.

17 (8) A workers' compensation self-insured group shall pay all workers' compensation
18 benefits required under KRS Chapter 342 for which each member incurs liability
19 during its period of membership, including assessments. A member who elects to
20 withdraw its membership or is terminated by a group remains liable for workers'
21 compensation liabilities, obligations, and assessments during the terminated or
22 withdrawn group member's period of membership. A group member shall not be
23 relieved of its workers' compensation liabilities incurred, including assessments,
24 during its period of membership, except through payment by the group or the
25 member of these liabilities.

26 (9) The insolvency or bankruptcy of a group member shall not relieve the workers'
27 compensation self-insured group or any group member of liability for the payment

1 of workers' compensation benefits incurred during the insolvent or bankrupt group
2 member's period of membership.

3 ➔Section 1639. KRS 304.50-100 is amended to read as follows:

4 (1) If a self-insured group decides to dissolve its self-insured program, the trustees
5 shall:

6 (a) File a detailed plan of dissolution with the commissioner~~[executive director]~~
7 for prior approval;

8 (b) Provide sixty (60) days written notice by certified mail to the
9 commissioner~~[executive director]~~ and each group member;

10 (c) Pay approved dividends; and

11 (d) Establish arrangements for the continued payment and servicing of all
12 outstanding claims, including incurred but not reported claims.

13 (2) The commissioner~~[executive director]~~ shall approve the plan unless the
14 commissioner~~[executive director]~~ determines it to be unlawful, unfair, inequitable,
15 or prejudicial to the interests of the members or injured workers, or the plan does
16 not fully discharge all obligations of the group.

17 ➔Section 1640. KRS 304.50-110 is amended to read as follows:

18 (1) In addition to reports required under KRS 304.50-060, each workers' compensation
19 self-insured group shall file with the commissioner~~[executive director]~~ an annual
20 statement of financial condition audited by an independent certified public
21 accountant on or before one hundred and twenty (120) days from the end of the
22 group's fiscal year for the immediately preceding fiscal year. The annual financial
23 statement shall be on a form approved by the commissioner~~[executive director]~~ and
24 in accordance with generally accepted accounting principles.

25 (2) The annual financial statement shall include actuarially appropriate reserves for:

26 (a) Known claims and expenses related to such claims;

27 (b) Claims incurred but not reported and any expenses associated such claims;

1 and

2 (c) Unearned premiums, contributions, and assessments.

3 (3) The annual financial statement shall also include an actuarial opinion by a qualified
4 actuary and a supporting reserve study regarding reserves for known claims and
5 expenses associated with such claims. The reserve study shall include
6 documentation sufficient for another actuary practicing in the same field to evaluate
7 the work. The documentation shall describe clearly the sources of data, material
8 assumptions, and methods.

9 (4) The following statements shall be included with the annual financial statement:

10 (a) Balance sheet;

11 (b) Statement of gain or loss from operations;

12 (c) Statement of changes in financial position; and

13 (d) Notes to financial statements required by generally accepted accounting
14 principles, which shall include a narrative explanation of all material
15 transactions and balances of the self-insured group.

16 (5) No person shall make a deceptive statement or fail to correct a misstatement in
17 connection with the solicitation of membership of a self-insured group.

18 ➔Section 1641. KRS 304.50-115 is amended to read as follows:

19 (1) A workers' compensation self-insured group shall file with the
20 commissioner~~executive director~~ its rates and supplementary rating information
21 and any changes made to its rates and supplementary information.

22 (a) Within one (1) year of March 1, 2005, each existing workers' compensation
23 self-insured group shall place on file with the commissioner~~executive~~
24 ~~director~~ its existing rates and supplementary rating information.

25 (b) The initial rates and supplementary rating information of any workers'
26 compensation self-insured group newly formed after March 1, 2005, shall not
27 become effective until filed with and approved by the

1 commissioner~~[executive director]~~.

2 (c) Any changes made to a workers' compensation self-insured group's rates or
3 supplementary rating information shall be filed pursuant to KRS 304.13-053.

4 (2) A workers' compensation self-insured group shall file with the
5 commissioner~~[executive director]~~ its existing coverage forms and any changes
6 made to such forms, in accordance with KRS 304.14-120.

7 (a) Within one (1) year of March 1, 2005, each existing workers' compensation
8 self-insured group shall place on file with the commissioner~~[executive~~
9 director] its existing coverage forms.

10 (b) The initial coverage forms of any workers' compensation self-insured group
11 newly formed after March 1, 2005, shall not be used or delivered until filed
12 with and approved by the commissioner~~[executive director]~~ pursuant to KRS
13 304.14-120.

14 (c) Any changes made to a workers' compensation self-insured group's coverage
15 forms shall be filed in accordance with KRS 304.14-120.

16 (d) The commissioner~~[executive director]~~ shall disapprove any coverage form
17 required to be filed under KRS 304.14-120, or withdraw any previous
18 approval of such form, only on one (1) or more of the following grounds:

- 19 1. If the coverage form is in any respect in violation of, or does not comply
20 with, this subtitle or KRS Chapter 342.
- 21 2. If the coverage form contains or incorporates by reference, where the
22 incorporation is otherwise permissible, any inconsistent, ambiguous, or
23 misleading clauses, or exceptions and conditions which deceptively
24 affect the risk purported to be assumed in the general coverage of the
25 contract.
- 26 3. If the coverage form has any title, heading, or other indication of its
27 provisions which is misleading, or is printed in a size of type or manner

1 of reproduction as to make the form substantially illegible.

2 (3) Coverage form and rate filings shall be accompanied by a filing fee as set forth in
 3 KRS 304.4-010 and administrative regulations promulgated by the
 4 commissioner~~executive director~~. Filings shall be open to public inspection at any
 5 reasonable time. Copies may be obtained by any person on request and on payment
 6 of a fee specified in Subtitle 4 of this chapter.

7 ➔Section 1642. KRS 304.50-120 is amended to read as follows:

8 (1) The commissioner~~executive director~~ shall promulgate administrative regulations
 9 setting forth the requirements for aggregate excess insurance and the standards for
 10 granting a waiver, but a workers' compensation self-insured group shall not be
 11 required to purchase aggregate excess insurance if the group's fund balance is thirty
 12 percent (30%) or more of earned premiums.

13 (2) Except for a worker's compensation self-insured group granted a waiver or
 14 exempted under subsection (1) of this section, the trustees shall purchase aggregate
 15 excess insurance.

16 (3) The trustees shall purchase specific excess insurance coverage with a limit of at
 17 least twenty-five million dollars (\$25,000,000) per occurrence.

18 (4) To be eligible to write excess liability coverage for a self-insured group, a casualty
 19 insurance company shall at all times maintain twenty-five million dollars
 20 (\$25,000,000) of minimum policyholder surplus.

21 ➔Section 1643. KRS 304.50-125 is amended to read as follows:

22 (1) In the computation of the retained liabilities of the self-insured group, reserves for
 23 claims or projected reserves for claims may be discounted for their present value if:

24 (a) The discounting is based upon the computation of a qualified actuary; and

25 (b) The computations and supporting documentation are filed annually in writing
 26 with the commissioner~~executive director~~.

27 (2) Discounting shall be approved by the commissioner~~executive director~~ unless:

(a) The actuary is found to be unqualified by the commissioner~~executive director~~; or

(b) The computations and supporting documentation presented by the actuary are rejected based on the opinion of the commissioner's~~executive director's~~ qualified actuary.

➔Section 1644. KRS 304.50-130 is amended to read as follows:

(1) Each member of a workers' compensation self-insured group shall receive written evidence of coverage by the group.

(2) All evidences of coverage issued pursuant to this section shall contain coverage terms, conditions, and exclusions.

(3) All evidences of coverage issued pursuant to this section by a self-insured group shall contain the following disclosure in prominent contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION SELF-INSURED GROUP WHICH IS REGULATED BY THE KENTUCKY DEPARTMENT~~OFFICE~~ OF INSURANCE AND HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE COVERED BY THE SELF-INSURED GROUP INSURANCE GUARANTY ASSOCIATION, BUT ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION. GROUP MEMBERS SHALL BE ASSESSED IN THE EVENT OF INSOLVENCY OF THE WORKERS' COMPENSATION SELF-INSURED GROUP.

(4) All evidences of coverage issued pursuant to this section by a workers' compensation self-insured group formed by governmental entities which have joint and several liability shall contain the following disclosure in prominent contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION SELF-INSURED GROUP WHICH HAS RECEIVED A

1 CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY.
 2 CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE
 3 KENTUCKY INSURANCE GUARANTY ASSOCIATION.

4 ➔Section 1645. KRS 304.50-135 is amended to read as follows:

5 (1) If a workers' compensation self-insured group has a members' fund balance that is
 6 less than the minimum amount required by this subtitle of one million dollars
 7 (\$1,000,000) and not a negative members' fund balance reported on an annual
 8 financial filing or by a report on examination, then within thirty (30) days of the
 9 filing or report, the self-insured group shall file with the commissioner~~[executive~~
 10 ~~director]~~ a written report that identifies the cause of the decrease in the fund
 11 balance, describes a plan for remedying the decrease in the fund balance, and
 12 identifies measures to be implemented to avoid similar future decreases in the fund
 13 balance. A report filed with the commissioner~~[executive-director]~~ under this
 14 subsection may be approved, disapproved, or modified by the
 15 commissioner~~[executive-director]~~. A self-insured group may cease operating under
 16 a report filed with the commissioner~~[executive-director]~~ under this subsection after
 17 the self-insured group's members' fund balance is one million dollars (\$1,000,000)
 18 or greater and the commissioner~~[executive-director]~~ has approved in writing the
 19 lifting of the terms of the report. A report filed with the commissioner~~[executive~~
 20 ~~director]~~ under this subsection shall be deemed part of the self-insured group's
 21 organizational documents for purposes of KRS 304.50-060.

22 (2) A workers' compensation self-insured group shall report any deficiency to the
 23 commissioner~~[executive-director]~~ as soon as it is identified. A deficiency reported
 24 on an annual financial filing or by a report on examination shall be deemed a
 25 verified deficiency. If a workers' compensation self-insured group has a verified
 26 deficiency, the deficit amount shall be made up immediately from the following:

27 (a) Surplus funds from a fund year other than the current fund year after prior

1 notice of the transfer has been given to the commissioner~~[executive director]~~;

2 (b) Implementation of the previously approved assessment plan; or

3 (c) Alternative methods as the commissioner~~[executive director]~~ may direct or
4 approve that provide financial security in the form of surety, deposit, letter of
5 credit, guarantee, or other assets or obligation.

6 (3) If a workers' compensation self-insured group fails to remedy a deficit as required in
7 subsection (2) of this section, the commissioner~~[executive director]~~ shall order the
8 group to do so.

9 (4) If a workers' compensation self-insured group fails to remedy a deficit or make the
10 required assessment of its members within thirty (30) days after the
11 commissioner~~[executive director]~~ orders the group to do so, the group shall be
12 deemed to be in hazardous financial condition and insolvent, under Subtitle 33 of
13 this chapter, and the commissioner~~[executive director]~~ may file a petition for
14 delinquency proceedings, as defined in Subtitle 33 of this chapter, in Franklin
15 Circuit Court.

16 (5) The commissioner~~[executive director]~~ shall place a workers' compensation self-
17 insured group into delinquency proceedings in accordance with the provisions of
18 Subtitle 33 of this chapter if the workers' compensation self-insured group is in
19 hazardous financial condition, insolvent or about to become insolvent, no longer
20 financially responsible and may reasonably be expected to be unable to meet its
21 obligations to members or prospective members, has failed to remedy a deficiency
22 in a reasonable and timely manner, or any other grounds that are provided in
23 Subtitle 33 of this chapter. A self-insured group shall be placed in delinquency
24 proceedings as an insurer, pursuant to Subtitle 33 of this chapter.

25 (6) The commissioner~~[executive director]~~ may approve bulk reinsurance or any other
26 transfer of the book of business if he or she finds that it is in the best interests of the
27 members and their employees.

➔Section 1646. KRS 304.50-140 is amended to read as follows:

(1) After a hearing or upon agreement by the workers' compensation self-insured group, the commissioner~~[executive director]~~ may suspend or revoke the certificate of filing of a self-insured group, impose a civil penalty of up to ten thousand dollars (\$10,000) per violation, or both if the group:

- (a) Operates significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, or administrative regulations relating to this subtitle, unless amendments to the submissions have been filed with and approved by the commissioner~~[executive director]~~ or there has been a significant and adverse change in the management of the self-insured group;
- (b) Or any person at the direction of the group advertises or merchandises its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner, or engages in unfair or deceptive practices as defined in Subtitle 12 of this chapter;
- (c) Violates the provisions of this subtitle or administrative regulations adopted thereunder;
- (d) Obtains a certificate of filing by unfair or deceptive means;
- (e) Misappropriates, converts illegally, withholds, or refuses to pay upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled to such moneys by the group or its administrator; or
- (f) Violated or failed to correct a violation of this subtitle or administrative regulations promulgated under this subtitle within a reasonable time period established by the commissioner~~[executive director]~~ in administrative regulations.

(2) In addition, the commissioner~~[executive director]~~ may impose a civil penalty of up to ten thousand dollars (\$10,000) per day for continuing violations.

- 1 (3) The commissioner~~[executive director]~~ shall conduct a hearing under this section in
2 accordance with Subtitle 2 of this chapter. The ruling of the
3 commissioner~~[executive director]~~ may be appealed to Franklin Circuit Court in
4 accordance with KRS 304.2-370. The commissioner~~[executive director]~~, during the
5 pendency of an appeal or request for a hearing, may utilize the security deposit
6 provided by the self-insured group to make payments of any workers' compensation
7 benefits currently due.
- 8 (4) If the commissioner~~[executive director]~~ revokes a self-insured group's certification,
9 the commissioner~~[executive director]~~ shall immediately notify the Kentucky group
10 self-insurance guaranty fund as established in KRS 342.906(2).
- 11 (5) When a certificate of filing of a self-insured group is suspended, the group shall not,
12 during the period of suspension, enroll any new participants or engage in any
13 advertising or solicitation.
- 14 (6) If the certificate of filing of a self-insured group is revoked for reasons other than
15 hazardous financial condition, the group shall proceed, immediately following the
16 effective date of the order of revocation, to conclude its affairs and shall conduct no
17 further business, except as may be essential to the orderly conclusion of the affairs
18 of the group. The group shall engage in no further advertising or solicitation. The
19 commissioner~~[executive director]~~ may, by written order, prevent further operation
20 of the self-insured group if further operation is not deemed to be in the best interest
21 of the members, and the self-insured group's members will be afforded the greatest
22 practical opportunity to obtain workers' compensation coverage elsewhere. If the
23 commissioner~~[executive director]~~ permits further operation, the workers'
24 compensation self-insured group shall continue to collect the premiums and
25 assessments required of its members.
- 26 (7) The commissioner~~[executive director]~~, in his or her discretion and without advance
27 notice or a hearing, may suspend or revoke the certificate of filing of any workers'

1 compensation self-insured group upon commencement of the following
 2 proceedings:

- 3 (a) Receivership;
- 4 (b) Conservatorship;
- 5 (c) Rehabilitation; or
- 6 (d) Other delinquency proceedings.

7 ➔Section 1647. KRS 304.50-150 is amended to read as follows:

8 (1) A person shall not:

- 9 (a) Make any deceptive statement or omit material facts in connection with
 10 solicitation for membership in a workers' compensation self-insured group; or
- 11 (b) Guarantee the payment of dividends or use statements or words in, or in
 12 connection with, any coverage which imply that the payment of dividends is
 13 guaranteed to occur.

14 (2) A workers' compensation self-insured group shall not engage in unfair business
 15 practices as defined by KRS Chapter 342, and shall:

- 16 (a) Respond to an inquiry from the commissioner~~executive director~~ on matters
 17 other than workers' compensation claims within fifteen (15) working days of
 18 receipt of such inquiry; and
- 19 (b) Respond to an inquiry from the commissioner~~executive director~~ of the
 20 Department~~Office~~ of Workers' Claims on matters concerning workers'
 21 compensation claims within fifteen (15) working days of receipt of such
 22 inquiry.

23 ➔Section 1648. KRS 304.50-160 is amended to read as follows:

24 Annually on or before the fifteenth day of December, the commissioner~~executive~~
 25 ~~director~~ shall make a report to the Governor and the Interim Joint Committees of
 26 Banking and Insurance and Labor and Industry on the status of workers' compensation
 27 self-insured groups.

1 ➔Section 1649. KRS 304.99-010 is amended to read as follows:

2 In addition to or in lieu of the specific penalties provided for by this code, any person who
3 violates any provision of this code or who knowingly violates any proper order of the
4 commissioner~~[executive-director]~~ shall, upon conviction by a court of competent
5 jurisdiction, be fined not less than one hundred dollars (\$100) or twice the amount of the
6 gain from the commission of the violation, whichever is greater, be subject to revocation
7 of certificate of authority or license, or both.

8 ➔Section 1650. KRS 304.99-015 is amended to read as follows:

9 (1) Any deputy director or any examiner who has knowledge of the statutory
10 insolvency, or hazardous financial condition as defined by administrative
11 regulation, of an authorized insurer, or that it is inexpedient to permit the authorized
12 insurer to continue business, and who fails to immediately present a signed report of
13 the facts to the commissioner~~[executive-director]~~, or who violates any of the
14 provisions of this chapter, shall forfeit his or her office or employment contract and
15 shall be fined not less than one hundred dollars (\$100) nor more than two thousand
16 dollars (\$2,000) for each offense.

17 (2) Any commissioner~~[executive-director]~~ who has knowledge of the statutory
18 insolvency, or hazardous financial condition as defined by administrative
19 regulation, of an authorized insurer, or that it is inexpedient to permit the authorized
20 insurer to continue business, and who willfully fails to take the action prescribed by
21 this chapter, or who violates any of the provisions of this chapter, shall forfeit his or
22 her office and shall be fined not less than five hundred dollars (\$500) nor more than
23 five thousand dollars (\$5,000) for each offense.

24 ➔Section 1651. KRS 304.99-020 is amended to read as follows:

25 (1) For any violation of this code where the commissioner~~[executive-director]~~ has the
26 power to revoke or suspend a license or certificate of authority, the
27 commissioner~~[he]~~ may in lieu thereof or in addition to such revocation or

suspension impose a civil penalty against the violator in the case of an insurer, a fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization of not more than ten thousand dollars (\$10,000) per violation; in the case of an agent, surplus lines broker, rental vehicle agent or managing employee, specialty credit producer or managing employee, or reinsurance intermediary broker or manager of not more than one thousand dollars (\$1,000) per violation; in the case of an adjuster, administrator, life settlement broker, life settlement provider, or consultant of not more than two thousand dollars (\$2,000) per violation.

(2) Such civil penalty may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.

(3) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

➔Section 1652. KRS 304.99-025 is amended to read as follows:

If any consultant or agent is found by the commissioner~~[executive-director]~~, after a hearing, to be in violation of KRS 304.9-350, the commissioner~~[executive-director]~~ may, in addition to any applicable suspension, revocation, or refusal to continue the consultant's or agent's license, impose a fine in the amount of the consultant's or agent's fees or commissions associated with the sale of the product which is the subject of the violation.

➔Section 1653. KRS 304.99-060 is amended to read as follows:

(1) (a) The owner of any vehicle who fails to have in full force and effect the security required by Subtitle 39 of this chapter shall:

1. Be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or sentenced to not more than ninety (90) days in jail, or both;
2. Have the registration of the motor vehicle revoked and the license plates

of the vehicle suspended for a period of one (1) year or until such time as proof, in a form satisfactory to the commissioner~~[executive director]~~, is furnished that the security is then and will remain in effect; and

3. For the second and each subsequent offense within any five (5) year period, have his or her operator's license revoked in accordance with KRS 186.560, and may be sentenced to one hundred and eighty (180) days in jail, or fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or both.

(b) Penalties under paragraph (a) of this subsection for the first offense are subject to conditional discharge, suspension, or other forms of reduction of penalty by judicial discretion upon production of proof of security.

(c) For the second and each subsequent offense, minimum fines, suspensions, and penalties under paragraph (a) of this subsection are subject to conditional discharge, suspension, or other forms of reduction of penalty, by judicial discretion only upon production of proof of security and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.

(d) Upon expiration of the minimum six (6) month policy period, the court shall order the vehicle owner to appear before it to verify renewal of the security required by Subtitle 39 of this chapter by production of proof of security and a receipt showing that a premium for a minimum six (6) month policy period has been paid.

(e) Failure to appear shall result in the suspension of the vehicle owner's operator's license pursuant to KRS 186.570.

(f) Unless uninterrupted coverage is maintained, cancellation or expiration of the procured security before the end of the minimum six (6) month policy period shall be a Class B misdemeanor.

(g) Unless the requirement of paragraph (d) of this subsection is satisfied, the

1 court shall revoke any conditional discharge, suspension, or other form of
 2 reduction of penalty granted under paragraph (c) of this subsection.

3 (2) A person who operates a motor vehicle without security on the motor vehicle as
 4 required by Subtitle 39 of this chapter shall:

5 (a) Be fined not less than five hundred dollars (\$500) nor more than one thousand
 6 dollars (\$1,000) or sentenced to not more than ninety (90) days in jail, or both;
 7 and

8 (b) For the second and each subsequent offense within any five (5) year period,
 9 have his or her operator's license revoked in accordance with KRS 186.560,
 10 and may be sentenced to not more than one hundred eighty (180) days in jail
 11 or fined not less than one thousand dollars (\$1,000) nor more than two
 12 thousand five hundred dollars (\$2,500), or both.

13 (3) If the person who operates a motor vehicle without security on the motor vehicle as
 14 required by Subtitle 39 of this chapter is also the owner of the motor vehicle, the
 15 person shall be subject to penalties under both subsection (1) and subsection (2) of
 16 this section.

17 ➔Section 1654. KRS 304.99-070 is amended to read as follows:

18 (1) Any private employer who is subject to the provisions of KRS 304.32-300 and who
 19 fails to purchase a conversion health insurance policy as required by subsection (1)
 20 shall be fined not less than one hundred dollars (\$100) nor more than one thousand
 21 dollars (\$1,000), and each day that a private employer fails to purchase a conversion
 22 policy as required herein shall constitute a separate offense.

23 (2) Any private employer who is subject to the provisions of KRS 304.32-320 and who
 24 fails to give to the Department~~[Office]~~ of Insurance the notice therein required shall
 25 be fined not less than one hundred dollars (\$100) nor more than five hundred dollars
 26 (\$500). Each day that an employer fails to give notice after the date on which notice
 27 is required shall constitute a separate offense.

➔Section 1655. KRS 304.99-085 is amended to read as follows:

(1) If any broker fails to file his or her annual statement as provided by KRS 304.10-170, he or she shall be liable for a fine of ten dollars (\$10) for each day of delinquency commencing with the first day of April.

(2) If any broker fails to remit the tax provided by KRS 304.10-180, unless it is shown to the satisfaction of the commissioner~~[executive director]~~ that the failure is due to reasonable cause, five percent (5%) of the tax found to be due by the commissioner~~[executive director]~~ shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it was filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall a penalty be less than twenty-five dollars (\$25).

➔Section 1656. KRS 304.99-090 is amended to read as follows:

If any insurance company, association, or exchange is found by the commissioner~~[executive director]~~, after a hearing, to have committed any of the acts set out in subsections (1) and (2) of KRS 304.6-030, the commissioner~~[executive director]~~ may require such company, association, or exchange to pay a fine not exceeding ten thousand dollars (\$10,000).

➔Section 1657. KRS 304.99-110 is amended to read as follows:

Any person violating KRS 304.12-140 shall be punished by a fine of not more than two hundred fifty dollars (\$250) or by imprisonment of not more than ninety (90) days, or both; and if he or she holds a license from the commissioner~~[executive director]~~, he or she shall forfeit the same. The Circuit Court of Franklin County on complaint by any person that KRS 304.12-140 is being violated, may issue an injunction against such violation and may hold in contempt and punish therefor in case of disregard of such injunction.

➔Section 1658. KRS 304.99-120 is amended to read as follows:

The commissioner~~[executive director]~~ may, if he or she finds that any person or organization has violated any provision of Subtitle 13, impose a penalty of not more than one thousand dollars (\$1,000) for each violation, but if the commissioner~~[he]~~ finds such violation to be willful he or she may impose a penalty of not more than five thousand dollars (\$5,000) for each such violation. Such penalties may be in addition to any other penalties provided by law.

➔Section 1659. KRS 304.99-123 is amended to read as follows:

(1) In addition to any other penalty or remedy authorized by law, the department~~[office]~~ may assess the following fines for noncompliance with KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123:

(a) A fine of one thousand dollars (\$1,000) per day or ten percent (10%) of the unpaid claim amount, whichever is greater, for each day that a clean claim remains unpaid in violation of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.

(b) Except for the late payment of claims under subsection (2) of this section, a fine of up to ten thousand dollars (\$10,000) where the commissioner~~[executive director]~~ determines that an insurer has willfully and knowingly violated KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 or has a pattern of repeated violations of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.

(2) For purposes of paragraph (a) of subsection (1) of this section, an insurer is in compliance when:

(a) Ninety-five percent (95%) of the clean claims received by the insurer, its agent, or designee during each calendar quarter, excluding pharmaceutical claims, were adjudicated within the claims payment timeframes in accordance with KRS 304.17A-702; and

(b) At least ninety percent (90%) of the total dollar amount for clean claims

received by the insurer, its agent, or designee during each calendar quarter, excluding pharmaceutical claims, that were not denied or contested, was paid within the claims payment timeframes established in KRS 304.17A-702.

➔Section 1660. KRS 304.99-126 is amended to read as follows:

(1) When a license issued under KRS 304.15-700 is suspended or revoked, the licensee, if the commissioner~~[executive director]~~ directs, shall proceed, immediately following the effective date of the suspension or revocation to conclude the affairs it is transacting under its license. The licensee shall not solicit, negotiate, advertise, or effectuate new contracts. The department~~[office]~~ shall retain jurisdiction over the licensee and trust until all life contracts have been fulfilled or canceled or have expired.

(2) During the suspension or revocation period in which the licensee is concluding existing contracts, the licensee shall continue to comply with KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section as if the license were in force.

(3) Any person who violates any provisions of KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section shall be subject to civil fines by the commissioner~~[executive director]~~ in an amount not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000). Each violation shall constitute a separate offense.

(4) The department~~[office]~~ shall refer violations to the Division of Insurance Fraud Investigation for further investigation, and, if appropriate, the Division of Insurance Fraud Investigation shall proceed as set forth in KRS 304.47-050(5).

➔Section 1661. KRS 304.99-130 is amended to read as follows:

(1) A fraternal benefit society neglecting to file the annual statement in the form and within the time provided for in Subtitle 29 of this chapter shall forfeit one hundred dollars (\$100) for each day during which such neglect continues, and, upon notice

1 by the commissioner~~[executive director]~~ to that effect, its authority to do business
2 in this state shall cease while such default continues.

3 (2) Any person who willfully makes a false or fraudulent statement or statements in or
4 relating to an application for membership or for the purpose of obtaining money
5 from or a benefit in any fraternal benefit society, shall upon conviction be fined not
6 less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or
7 imprisonment in the county jail of not less than thirty (30) days nor more than one
8 (1) year, or both.

9 (3) Any person who willfully makes a false or fraudulent statement in any verified
10 report or declaration under oath required or authorized by Subtitle 29 of this
11 chapter, or of any material fact or thing contained in a sworn statement concerning
12 the death or disability of a member for the purpose of procuring payment of a
13 benefit named in the certificate, shall be guilty of perjury and shall be subject to the
14 penalties therefor prescribed by law.

15 (4) Any person who solicits membership for, or in any manner assists in procuring
16 membership in, any fraternal benefit society not licensed to do business in this state
17 shall upon conviction be fined not less than one hundred dollars (\$100).

18 ➔Section 1662. KRS 304.99-140 is amended to read as follows:

19 (1) Any person who shall engage in the business of financing insurance premiums in
20 this state without obtaining a license as provided by KRS 304.30-030(1) shall, upon
21 conviction by a court of competent jurisdiction, be guilty of a misdemeanor and
22 shall be subject to a fine of not more than one thousand dollars (\$1,000) or be
23 imprisoned not more than one (1) year, or both.

24 (2) In lieu of or in addition to revoking or suspending the license of an insurance
25 premium finance company for any of the causes enumerated in KRS 304.30-050,
26 after a hearing as provided in KRS 304.30-050 the commissioner~~[executive
27 director]~~ may subject such company to a penalty of not more than one thousand

dollars (\$1,000) for each offense.

➔Section 1663. KRS 304.99-150 is amended to read as follows:

- (1) Any person acting pursuant to Subtitle 45 of this chapter who violates any applicable provision of this chapter or other applicable insurance laws shall be subject to suspension or revocation of licenses, certificates of authority, or permission to do business in this state, imposition of civil penalties of up to ten thousand dollars (\$10,000) per violation, or both. The penalties prescribed in this subsection may be imposed through administrative proceedings in the Department~~[Office]~~ of Insurance, an action, or such other proceedings specified by law. Any civil penalty not paid may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.

- (2) This section applies to Subtitle 45 of this chapter.

➔Section 1664. KRS 304.99-151 is amended to read as follows:

- (1) Any person who violates a cease and desist order of the commissioner~~[executive director]~~ under KRS 304.37-130(5) may, after notice and hearing and upon order of the commissioner~~[executive director]~~, be subject at the discretion of the commissioner~~[executive director]~~ to a civil penalty of not more than ten thousand dollars (\$10,000) for every day of violation, suspension, or revocation of the person's license or certificate of authority, or both.

- (2) Any insurer or other person who fails to make any filing required by KRS 304.37-120 and who also fails to demonstrate a good faith effort to comply with any filing requirement shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000).

➔Section 1665. KRS 304.99-152 is amended to read as follows:

- (1) Any insurer failing, without just cause, to file any registration statement as required by Subtitle 37 of this chapter, shall be required, after notice and hearing, to pay a civil penalty of ten thousand dollars (\$10,000) for each day's delay to the

1 commissioner~~[executive director]~~. The maximum civil penalty under this section
 2 shall be one hundred thousand dollars (\$100,000). The commissioner~~[executive~~
 3 ~~director]~~ may reduce the civil penalty if the insurer demonstrates to the
 4 commissioner~~[executive director]~~ that the imposition of the penalty would
 5 constitute a financial hardship to the insurer.

6 (2) Every director or officer of an insurance holding company system who knowingly
 7 violates, participates in, assents to, or who knowingly permits any of the officers or
 8 agents of the insurer to engage in transactions or make investments which have not
 9 been properly reported or submitted pursuant to KRS 304.37-020(1), 304.37-
 10 030(2), or 304.37-030(5), or which violate Subtitle 37 of this chapter, shall pay, in
 11 their individual capacities, a civil penalty of not more than five thousand dollars
 12 (\$5,000) per violation, after notice and hearing before the commissioner~~[executive~~
 13 ~~director]~~. In determining the amount of the civil penalty, the
 14 commissioner~~[executive director]~~ shall take into account the appropriateness of the
 15 civil penalty with respect to the gravity of the violation, the history of previous
 16 violations, and other matters justice may require.

17 (3) If it appears that any insurer subject to Subtitle 37 of this chapter, or any director,
 18 officer, employee, or agent has engaged in any transaction or entered into any
 19 contract which is subject to KRS 304.37-030 and which would not have been
 20 approved had approval been requested, the commissioner~~[executive director]~~ may
 21 order the insurer to cease and desist immediately any further activity under that
 22 transaction or contract. After notice and hearing, the commissioner~~[executive~~
 23 ~~director]~~ may also order the insurer to void the contracts and restore the status quo if
 24 the action is in the best interest of the policyholders, creditors, or the public.

25 (4) If it appears that any insurer or any director, officer, employee, or agent has
 26 committed a willful violation of Subtitle 37 of this chapter, the
 27 commissioner~~[executive director]~~ may cause criminal proceedings to be instituted

1 in the Circuit Court for the county in which the principal office of the insurer is
 2 located, or if the insurer has no office in Kentucky, in the Franklin Circuit Court
 3 against the insurer or the responsible director, officer, employee, or agent. Any
 4 insurer which willfully violates Subtitle 37 of this chapter, may be fined not more
 5 than one hundred thousand dollars (\$100,000). Any individual who willfully
 6 violates Subtitle 37 of this chapter, may be fined in his or her individual capacity
 7 not more than one thousand dollars (\$1,000), be imprisoned for not more than one
 8 (1) to three (3) years, or both.

- 9 (5) Any officer, director, or employee of an insurance holding company system who
 10 willfully and knowingly subscribes to or makes or causes to be made any false
 11 statements or false reports or false filings with the intent to deceive the
 12 commissioner~~[executive-director]~~ in the performance of his or her duties under
 13 Subtitle 37 of this chapter, upon conviction, shall be imprisoned for not more than
 14 one (1) year or more than five (5) years, or fined ten thousand dollars (\$10,000), or
 15 both. Any fines imposed shall be paid by the officer, director, or employee in his or
 16 her individual capacity.

17 ➔Section 1666. KRS 309.131 is amended to read as follows:

- 18 (1) There is hereby created the Kentucky Board of Licensure for Professional Art
 19 Therapists that shall be attached to the Office~~[Division]~~ of Occupations and
 20 Professions in the~~[Environmental and]~~ Public Protection Cabinet for administrative
 21 purposes. The board shall consist of five (5) members who are United States
 22 citizens and have been Kentucky residents for at least five (5) years prior to their
 23 appointment. The board membership shall be determined as follows:
- 24 (a) Four (4) members shall be professional art therapists who are licensed
 25 pursuant to KRS 309.133, and shall have engaged in art therapy practice for at
 26 least five (5) years. These members shall not hold any elected or appointed
 27 office in any professional organization of art therapy or closely related field

1 during their tenure on the board; and

2 (b) One (1) member shall represent the public. The public member shall not have
3 been licensed or have practiced as a professional art therapist, nor have any
4 significant financial interest, either direct or indirect, in the profession of art
5 therapy.

6 (2) All members of the board shall be appointed by the Governor for staggered terms of
7 four (4) years.

8 (3) The four (4) professional members shall be appointed from a list of eight (8) names
9 submitted by the board of directors of the Kentucky Art Therapy Association, Inc.,
10 and the one (1) public member shall be a citizen at large. Each member shall hold
11 office until a successor is appointed. Vacancies shall be filled in the same manner as
12 original appointments. No board member shall serve more than two (2) consecutive
13 terms.

14 (4) Each board candidate shall be licensed as an art therapist prior to nomination and
15 shall be actively engaged in the practicing or teaching of art therapy, except for the
16 one (1) public member.

17 (5) Members of the board shall receive no compensation, perquisite, or allowance.

18 (6) The board shall elect annually from its membership a chairman, secretary, and other
19 officers as necessary to carry out its duties.

20 (7) The board shall meet at least two (2) times each year. Additional meetings may be
21 called by the chairman, upon the written request of at least two (2) members of the
22 board. A simple majority of the board members shall constitute a quorum of the
23 board.

24 ➔Section 1667. KRS 309.354 is amended to read as follows:

25 (1) There is created a board to be known as the Kentucky Board of Licensure for
26 Massage Therapy, which shall be an independent agency~~[- attached to the Division~~
27 ~~of Occupations and Professions for administrative and clerical purposes].~~